

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

As required by the
Washington State Administrative Procedure Act
Chapter 34.05 RCW

Concise Explanatory Statement and Responsiveness Summary for the
Adoption of Amendments to
Chapter 173-175 WAC, *Dam Safety*
AO # 03-08

August 4, 2004
04-11-013

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Water Resources – Dam Safety Program

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I. Introduction and Background Statement

Rules for dams in the state were adopted as part of the original 1917 Water Code and the state has exercised responsibility for certain dams in the state since that time. In 1992, the Dam Safety Office, a part of the Department of Ecology, adopted rules (Chapter 173-175 WAC) to establish a "risk-based, consequence-dependent" approach to address safety-related disparities across the state (particularly between Eastern and Western Washington). These rules have been amended once, in 1995.

There are currently more than 900 non-federal, non-hydropower dams in Washington that store at least 10 acre-feet of water or watery materials, such as mine tailings, sewage and manure waste. A single acre-foot of water contains 325,851 gallons, which is enough to cover a square acre of land 12 inches deep. Of the 900 dams, 320 pose a significant or higher threat to downstream residents if the structures failed because of an earthquake, storm or other catastrophe. As alluded to above, the risk is based on the number of people and structures that reside downstream from the dam.

Ecology is now amending the state Dam Safety Rules a second time. The current amendments will include fee increases for plan reviews and construction inspections, and resume the collection of fees for Ecology's periodic inspection of existing dams. Some updating of language and other minor revisions also will take place.

Summary of the Purpose of the Rule Amendments

In April 2002, the Office of Financial Management (OFM) asked Ecology to look at both increasing existing fees for plan review and charging fees for periodic inspection, as allowed by RCW 90.03.470. Ecology developed proposals, which were accepted by OFM¹, and both fees were included in the Governor's budget, and were part of the final budget passed by the Legislature. In return, the Dam Safety Office was authorized 1 new FTE ("Full-Time Equivalent," or the "equivalent of" one full-time worker) toward improving its inspection cycle on "high risk" dams to five years (as recommended in an audit of our program by the Association of State Dam Safety Officials).

Currently Dam Safety is expending 1.3 FTE toward plan review and construction inspections, which costs about \$143,000 per year (at an Environmental Engineer 4 level). The current fee structure was designed to recoup 95% of actual costs in 1992 (to avoid overcharging) with fees ranging from \$500 to \$20,000. However, Dam Safety is generating an average of only \$40,300 per year in fee collections, largely due to a lack of large projects which were expected to subsidize smaller projects.

Proposed Plan Review Fee Increase: The Dam Safety Office has recommended that it continue to attempt to recoup 95% percent of its costs. Thus, a revised fee schedule will need to generate a total of \$136,000 per year to cover 95% of our actual costs, and the simplest way to accomplish this is to increase existing fees 180% across the board. This would increase fees from \$500 to \$1400 on small dams, and from \$20,000 to \$56,000 on large dams. This 180% increase was accepted by OFM, and subsequently the Legislature, based on the revenue

¹ Budget Note in FY03-05 Operating Budget. The House version of the budget note stated: "Funding is provided for an additional staff person in FY 2005, to increase the inspections of high risk dams to every five years, rather than the current schedule of every six to ten years. Fees for approving new dam construction and modifications will be increased to cover the actual cost of plan reviews, and fees for periodic dam inspections will be instituted to begin covering the cost of inspections." The Senate version said: "Funding is increased to reflect new fees for approving new dam construction and modifications to cover the actual cost of plan reviews. Fees for periodic dam inspections will be instituted to begin covering the cost of inspections."

numbers in the budget notes. This exceeds the fiscal growth factor limits imposed by I-601, but Ecology was given a two-year exemption from this requirement in the operating budget.

Proposed Inspection Fees: Authority to charge "...actual costs including expenses incident thereto" for dam safety inspections dates from the 1917 Water Code. Bills were sent to dam owners for inspections from the 1920s through the 1930s. However, for reasons Ecology cannot determine, collection of inspection costs ceased in the 1940s, and was never resumed. Currently, Dam Safety has 1.4 FTE available for periodic inspections. With the added FTE in FY05 ("Fiscal Year 2005," which is from July 1, 2004 to June 30, 2005) the program will have 2.4 FTEs, which will allow it to achieve a five-year cycle on high hazard dams. However, the added FTE will not be sufficient to establish a five-year cycle on significant hazard dams.

Inspection fees will be charged annually, on a pro-rated basis, with the "actual cost" of inspecting the dam divided by the number of years in the inspection cycle. That is, a \$3440 fee for inspection of a high hazard dam every five years would result in a charge of \$688 for each of those five years. Actual costs would include the inspection site visit, as well as the time spent writing the report, and administrative costs. Engineering Analyses (Floods, Seismic, Structural) would be prioritized and done separately from inspections. These costs would not be included with the inspection fees.

Statutory Authority

The statutory authority for the Dam Safety rule is derived from RCWs 43.21A.064, 43.21A.080, 86.16.061, 90.03.350, and 90.03.470. The proposed amendments are changes to Chapter 173-175 WAC, Dam Safety Regulations. Chapter 173-175 WAC was first filed on December 16, 1992, and took effect on January 1, 1993. The purpose of this rule amendment is to modify fees that are collected from owners of existing dams and entities proposing to build new dams.

Scheduled Adoption Date and Date Rule Takes Effect

The rule will be adopted on August 4, 2004 and will go into effect 31 days later, on September 4, 2004.

II. Concise Summary of Differences between the Proposed and Adopted Rule

Change 1 - WAC 173-175-020 Applicability.Only water that can be stored above natural ground level ((and)) or which could be released by a failure of the dam *in combination with natural ground* is considered in assessing the storage volume. **Was changed to....**

.....Only water that can be stored above natural ground level ((and)) or which could be released by a failure of the dam is considered in assessing the storage volume.

This change was made to clarify and simplify the rule. We received comments that the original language was confusing and seemed to indicate that we were going to regulate all below-ground impoundments.

Change 2 - WAC 173-175-360 Construction permit fees for new project construction.

(3) Fees for the review of plans and specifications and for construction inspection for new dairy waste impoundments shall be in the amount of one thousand four hundred dollars, provided the project meets the following requirements: **Was changed to....**

(3) Fees for the review of plans and specifications and for construction inspection for new dairy waste impoundments **or conservation dams** shall be in the amount of one thousand four hundred dollars, provided the project meets the following requirements:

Conservation dams were added to this category based on comments received. Ecology's opinion is that fees charged for these beneficial projects would be disproportionate to the amount of work required by the department to review and approve the building permits for the projects. The Natural Resources Conservation Service (NRCS) also designs and constructs this class of dams, in addition to dairy waste impoundments. Ecology has added language to the rule enabling the department to establish a Memorandum of Agreement with NRCS that, if found to be appropriate, would allow plan review costs for these dams to be lowered.

Change 3 - WAC 173-175-610 Emergencies. (1) When, in the opinion of the department, an emergency condition exists which poses an imminent threat to ((life)) public safety, the department may take such action as necessary to eliminate or mitigate the hazard and potential consequences. **Was changed to...**

(1) When, in the opinion of the department, an emergency condition exists which poses an imminent threat to **life**, the department may take such action as necessary to eliminate or mitigate the hazard and potential consequences.

This change was made after we received a comment that allowing the department to declare an emergency in the event of a threat to public safety, instead of solely a threat to life, gave the department authority that was too broad and could conceivably be abused. We concurred with this comment and reverted to the original "threat to life" wording.

Change 4 - WAC 173-175-725 Nonroutine inspections by department. (1) The department may perform nonroutine inspections of dams with any downstream hazard classification, separate from the periodic inspection program. *[Note: These inspections do not require fees.]* The purposes for these inspections include, but are not limited to, the following:.. **Was changed by adding...**

..."(e) **Surficial inspections of low hazard dams**" to the final version to clarify that fees will not be charged for inspections of low hazard dams.

Change 5 - WAC 173-175-765 Periodic inspection fee schedule

.....(c) The cost for an inspection by the department in the base year will be as follows:

(i) \$4000.00 for dams with high downstream hazard classifications, with a prorated annual fee of \$800.00 for a five-year inspection cycle. Was changed to.....

.....(c) The cost for an inspection by the department in the base year will be as follows:

(i) **\$3440.00** for dams with high downstream hazard classifications, with a prorated annual fee of **\$688.00** for a five-year inspection cycle.

This change was made based on comments received from several dam owners that questioned the assumptions we made in computing actual costs. Specifically, the original estimate of inspection cost for a high hazard dam inspection was based on an assumption that the department would only inspect one dam per field trip. The commenter pointed out that it would be more efficient and cheaper if we combined two or more inspections in a single trip. After looking at our assumptions, we concurred that combining two dams in one trip was feasible, so the inspection fee was recomputed to account for this. This resulted in a reduction in the fee from \$4000 per dam to \$3440.

Change 6 - WAC 173-175-785 Periodic inspection fee payments. 1) The applicable permit fee shall be paid by check or money order payable to the department of ecology and mailed to the following address: [Department of Ecology...]

(2) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid. Was changed to....

1) The applicable **inspection** fee shall be paid by check or money order payable to the department of ecology and mailed to the following address: [Department of Ecology...]

(2) In the event a check is returned due to insufficient funds, the department shall consider the **inspection** fee to be unpaid.

This change was to correct a typographical error which used the wrong word for the fee.

Change 7 - WAC 173-175-785 Periodic inspection fee payments.... (3) Delinquent accounts.

Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by certified mail that they have ninety days to bring the delinquent account up-to-date. Regulatory orders may be issued to enforce a restriction of reservoir filling until all delinquent fees are paid on accounts that remain delinquent after ninety days. Was changed to.....

(3) **Delinquent accounts. Dam owners** are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by certified mail that they have **one hundred eighty days** to bring the delinquent account up-to-date. Regulatory orders may be issued to enforce a restriction of reservoir filling until all delinquent fees are paid on accounts that remain delinquent after **one hundred eighty days**.

This change was made to give municipal dam owners more time to submit their fees, and to correct a typographical error (changing "permit holders" to "dam owners.")

Change 8 - WAC 173-175-785 Periodic inspection fee payments... (3) Delinquent accounts.....

b) Nonmunicipal or nongovernment permit holders shall be notified by the department by certified mail that they have ninety days to bring the delinquent account up-to-date. Accounts that remain delinquent after ninety days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. **Was changed to.....**

b) Nonmunicipal or nongovernment **dam owners** shall be notified by the department by certified mail that they have **one hundred eighty days** to bring the delinquent account up-to-date. Accounts that remain delinquent after **one hundred eighty days may** be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added.

This change was made to give dam owners more time to submit their fees. Also, we wanted to provide more flexibility to the department as to when we would turn a delinquent account over to collection. Finally, a typographical error was corrected, changing permit holders to dam owners.

III. Summary of Key Issues

The primary issues regarding this rule proposal are the magnitude of the fee increases for review of both plans and inspections. Plan review fees will increase over 180%; however, the fee will still be a minor part of the costs of designing and building a dam. Fees for State inspections of existing dams have been authorized since 1917, but haven't been collected since the 1930s (which also is a contentious issue; i.e., "Why start again now?"). The new annual fee charged to pay for a periodic inspection would be relatively large (fees will be either \$688 annually for five years, or \$250 annually for ten years, depending on whether the dam is a High or Significant Hazard dam, respectively).

IV. Comments and Responses (Responsiveness Summary)

The format of this section is as follows: Comments have been divided into broad categories, which often have variations on the theme of the general comment. The broad category is identified by a capital letter; sub-categories are in **bold** and numbered. Following the heading of each sub-category, the commenters who raised the particular issue are listed.

Each commenter's name is followed by a number or numbers; these correspond to the numbers given to the comments in Appendix A. In this appendix the commenters are listed alphabetically, followed by a summary of their comments. Each summarized comment is numbered consecutively from the first commenter through the last. Following each comment is the capital letter and number corresponding to the sequence of comment categories, below. (The full text of each oral and written comment is also included in Appendices B and C, respectively.)

A. Concerns about the proposed fees

Ecology received dozens of comments expressing concerns about the proposed fees. The primary concerns noted were: (1) the fees were too high ("excessive," "outrageous"); (2) the fees are an additional and unwarranted "tax," as well as a government "intrusion;" and (3) the possibility that the fees could lead to people and businesses not being able to continue using their dams and ponds. Although these three concerns were often intertwined in the comments, they have been separated below to give an indication of how many comments touched on each of these issues.

1. Opposed to fee increases based on their magnitude.

The following commenters made statements to this effect: *Representative Mike Armstrong* (1,3); *Jerry Barnes* (4); *Beehive Irrigation District* (7,8); *John Boyce* (13,14,20,21); *James Brewster* (23,24); *Michael Caine* (26); *Merdo Capeters* (29,30); *Mark Cauchy* (36); *City of Snoqualmie* (39,41); *June Donais* (43,44); *Beverly Edwards* (46); *Mike and Elwood Edwards* (51); *Bill Fountain* (52,55,56); *Mitch Gaspar* (59,60); *Sheldon Magnuson* (73,78,81); *Mike Matney* (87,92); *Kurt Mayer* (96,97,98); *Gilbert McGee* (101,103,104); *Roger McMillan* (107,109,110); *June Petersen* (129,134); *Reflection Lake Community Association* (137,138); *Blanche Roening* (140,141); *Jack Roening* (145,155,160,161); *Representative Mark Schoesler* (162,163); *Pat Stahl* (166,167); *Wenatchee Heights Reclamation District* (169,173); *Ron Weson* (176); *Chuck Willis* (178,183); *John Wilson* (188,190).

Response: Ecology staff, in the course of presentations during hearings, made it clear that the fees were the average cost to the department for a typical inspection across the expected universe of likely fee payers. Agency management, the governor's budget people at the Office of Financial Management (OFM), and legislative budget negotiators accepted the calculated fee increases as part of directing Ecology to resume assessing inspection fees and plan review fee increases. Their acceptance of our proposed fee increases presumably indicates that they found the fees were reasonable.

However, during the Public Hearings for this rule revision, a number of suggestions were made on improving Dam Safety Office efficiency in performing the inspections. Specifically, it was suggested that the department could combine inspections for high hazard dams, rather than doing only one inspection per trip. Ecology concurred with these suggestions and, consequently, the proposed annual high hazard dam periodic inspection fees were reduced by 14%, from \$800 per year to \$688 per year.

2. The fee is a tax, and taxes for inspections, etc., are already paid for through the General Fund; also expressions of resentment of government involvement.

The following commenters made statements similar to the above: *Beehive Irrigation District* (9);

John Boyce (15); Mike and Elwood Edwards (49,50,51); Bill Fountain (52,58); John Krogh (67); Forest D. Lee (68); Sheldon Magnuson (74,76,79,80,82); Mike Matney (95); Gilbert McGee (101,105,106) Tom Nichols (116); Reflection Lake Community Association (136,138); Blanche Roening (140); Jack Roening (158,159); Pat Stahl (167); Wenatchee Heights Reclamation District (172); John Wilson (190).

Response: There is a concept of governmental economics that people deriving value from a particular service (dam safety in this case) should be charged fees for those services rather than supporting the activity from general tax revenue. As the primary beneficiaries of whatever service is being provided, they should provide the majority of the financing for the activity. Since dam safety also has a public component of providing safety for those living downstream, there is also a percentage of the program budget coming out of general tax revenue. Theoretically, as general tax revenue support is withdrawn, the general tax burden for everybody else decreases incrementally, or the level of service for other activities can increase due to more funds being available from the general fund.

Concerning resentment about the government's role in dam safety, this role has been clearly defined since the original water code was written in 1917. The state has supported different funding levels for dam safety throughout the years. It is the goal of this particular administration to meet federal recommendations for periodic inspection intervals and other activities, funded by the dam safety fees.

3. Fees will hurt low-margin businesses and non-profit dams and ponds, possibly eliminating some and preventing others from being built.

The following commenters made statements similar to the above: *Representative Mike Armstrong (2); John Boyce (12,13,14,16,20); Merdo Capeters (29); Mark Cauchy (38); City of Snoqualmie (39); Beverly Edwards (46,48); Bill Fountain (53,54,57); Sheldon Magnuson (77,80,81,83); Kurt Mayer (97-100); Gilbert McGee (103,104) Blanche Roening (142,143); Jack Roening (146); Representative Mark Schoesler (162,164); Pat Stahl (166,168); Wenatchee Heights Reclamation District (170,171,174); Chuck Willis (178,179).*

Response: The basis for assessing fees for periodic inspections is the downstream hazard potential of a dam, i.e., the number of people potentially at risk downstream from a dam. If the dam poses a threat to lives in the event of a dam failure, then it is included in the dam inspection program, regardless of the size of the dam or who owns it. The downstream hazard is more dependent on the geographic location of a dam than on its size or type of use. For dams with the same downstream hazard classification, the cost to Ecology to perform an inspection is approximately the same across the state.

Obviously, economic cycles and the profitability of a particular project make maintaining and supporting those dams easier or harder depending on the particular use of the facility. Unfortunately, since the statutes and legislative directive require us to recoup the actual cost of the inspections, it is not possible to lessen fees for some dam owners and increase fees for others. However, as outlined in the SBEIS, the department has provided the following features in an effort to reduce the impact of the fees on small businesses and non-profits:

- The dam safety inspection fees are prorated over the length of the inspection cycle.
- The construction permit fee is staggered based on dam size rather than being a flat fee.
- For projects to repair safety deficiencies identified by the department, the fee is set at the lowest level on the fee table, \$1,400

B. Dam and reservoir/pond-related issues

A number of commenters indicated that their dams and/or ponds provide valuable services, especially environmental amenities, to the public at large; they generally felt that the proposed fees would jeopardize their ability to maintain their ponds and dams. Other commenters stated that their dams are safe, with the implication that the inspections (and therefore the fees) are not

necessary in the case of these dams. Some of the latter requested that their dams be reclassified so they would not be subject to the fees.

1. Dams provide environmental benefits to the public; these benefits are threatened by increased fees.

John Boyce (17,18,21); Michael Caine (28); Beverly Edwards (46,48); Mike and Elwood Edwards (50,51); Bill Fountain (53,54,57); Mitch Gaspar (59); Sheldon Magnuson (72,77,80,81,83); Mike Matney (88-95); Gilbert McGee (103-106); June Petersen (129-133) Blanche Roening (142,143); Jack Roening (146,155); Representative Mark Schoesler (162-164); John Wilson (189)

Response: We recognize that many dams provide a benefit to the public, as well as presenting a potential risk. In an ideal world, dam owners could be credited for providing flood control and other environmental benefits. Unfortunately, this is beyond the scope of the current statute that requires owners to pay the actual cost of the inspection. Such a change would require legislative action.

2. Individual commenters' dams are safe and dams in the state are generally safe; also, dam safety is subjective and depends on a number of circumstances.

Jerry Barnes (5); John Boyce (19); Michael Caine (25,27); Merdo Capeters (34,35); Forest D. Lee (69); Stan Long (70,71); Sheldon Magnuson (75); Reflection Lake Community Association (137); Jack Roening (147-156); Ron Weson (177); John Wilson (187).

Response: All dams by their nature are innately hazardous structures and pose a potential risk to lives and property downstream from the site. All dams must be properly operated and maintained over time to keep them safe. Even if a dam is "safe" right now, that doesn't mean that it will automatically remain so over the years. Flaws and weaknesses can develop in a dam because of aging. Also, development can occur downstream from a dam, resulting in the need for more stringent design loadings due to a greater population being at risk.

This is why the state has been charged with the duty of periodically inspecting dams, so that deficiencies can be detected and corrected in a timely manner. In addition, an owner's definition of "safe" may not match state requirements for safety. State dam safety standards are typically much more stringent than other safety standards, especially when loss of life is possible. Therefore, high and significant hazard dams cannot be exempted from the rules, even if the owners believe they are safe at this time.

C. Comments regarding the rule-making process and the Dam Safety Office

The primary concern raised about the rule-making process was that the hearings were not adequately publicized. Some individuals also believed that Ecology presented certain information in a manner that was misleading, and one commenter thought the hearings were located inconveniently. Certain comments were also received specifically about the Dam Safety Office.

1. Inadequate notice was given for the hearings.

June Donais (42); Sheldon Magnuson (85); Gilbert McGee (102); June Petersen (129); Reflection Lake Community Association (135); John Wilson (186)

Response: Potential meeting attendees were notified of the hearings through direct mail (to dam owners), press releases, radio advertisements, notices in regional papers, and by the filing of the CR-102 in State Register with meeting dates and locations. The community the Dam Safety Office attempted to reach concerning the proposal consisted of: 1) those who own dams; 2) those who might own dams; 3) those affected by someone else owning a dam; and 4) decision-makers who affect ownership or operation of a dam or dams.

- Owners of high and significant hazard dams were notified by two direct mailings. The first was about rulemaking in general; this mailing also announced that meetings would follow in the near future and provided contact numbers for Dam Safety Office. A second, more specific mailing announcing the meeting dates and locations, was sent to these owners about a month before the public hearings.
- Owners of low hazard dams were not notified directly, because the new periodic inspection fees would not affect them. Also, the rule revisions will only affect them if they were to modify their dam(s). However, notification regarding the proposal and hearings through newspaper articles and notices, as well as radio ads, was widely distributed and represented an extensive effort to provide such notice.
- Those who might own dams are, of course, individuals in the public in general. These individuals could only reasonably be notified through the regional distribution of notices and articles published widely in newspapers, and through press releases conveyed through both newspaper and radio.
- Those who are or might be affected by dams are primarily downstream residents, as well as individuals in the public in general. Again, these individuals could only reasonably be notified through the regional distribution of notices and articles published widely in newspapers, and through press releases conveyed through both newspaper and radio.
- Decision-makers who affect ownership or operation of dams were notified through the media efforts described above, as well by a notice published in the State Register, direct mailings to organizations such as the Association of Cities, and a briefing to Ecology's Water Resources Advisory Committee.

2. The hearing locations were not convenient.

John Boyce (11)

Response: Unfortunately, it is not possible to hold enough hearings so that one of them will be convenient for every individual. The hearings were held in Northwestern Washington (Mt. Vernon); South Sound (Lacey); Eastern Washington (Spokane); and Central Washington (Wenatchee). Ecology believed these cities were appropriate sites, at least one of which was within reach of virtually all residents of the state (although, unfortunately, not necessarily convenient for many).

3. Aspects of Ecology's communication were perceived as inaccurate.

Beverly Edwards (45,47); Kurt Mayer (97,98); Gilbert McGee (101,106); Roger McMillan (112); Blanche Roening (144); Jack Roening (157,159); Chuck Willis (179)

Response: Ecology sent a "Frequently Asked Questions" (FAQ) publication to high and significant hazard dam owners that dealt directly with: 1) why is Ecology amending the dam safety rule; 2) how the Dam Safety Office functions in Washington State; 3) What the proposed fees were and how they were derived; and 4) why Ecology resumed collection of Periodic Inspection fees. The FAQ was also posted on our web site.

The Hearing Notice was sent to an extensive list of interested parties, newspapers and radio stations, and dam owners. This notice briefly explained how the Dam Safety Office is supported in Washington State, and discussed resumption of periodic inspection fees and raising the fee for reviewing plans for new dams by the Dam Safety Office. At all stages, we made every effort to clearly define what was intended by the changes and who would be affected by them.

4. Concerns about the time required to receive an inspection report from Dam Safety

Merdo Capeters, Lake Marcel Community Club (31,32) "...[W]e've had two inspections since I've been there in 20 years. I think one was in '95 and the other one was in 2002. And at that time, two men came out and probably spent no more than about two hours at the dam site itself. And the last time they didn't find anything that we had to do. The first time there were a few things which we corrected. So I wouldn't think that that's worth \$4,000 for an inspection. I realize there's some office time too. On our last inspection which was two years, well, will be two years ago in October, we have not even received your report on that. Hopefully if we're going to pay that much money, we'll get better service than that.

Chuck Willis, Lake Marcel Community Club (182) "LMCC's dam was last inspected in October 2002 and we still have not received the report from Ecology. We are in the process of updating our long-term maintenance plan for the dam and find it necessary to hire a private engineering firm to assist us partly due to the fact that we have not received our report yet from Ecology. I am sure you can understand that we are reluctant to contribute to a fee system that has not provided us with timely information in the past."

Response: We recognize that our response time in completing inspection reports has been slower than we (and dam owners) would like, and are working to reduce the time to six months or less. (Subsequent to receiving these comments, we finished the Lake Marcel inspection report, and sent it to the Lake Marcel Community Club.)

5. Positive comments about the Dam Safety Office

Jerry Barnes, Secretary/Manager, Whitestone Reclamation District (Letter to Senator Morton) -- (6) "We have been in contact with Doug Johnson, supervisor of the dam safety section, and would have to say dealing with Doug and his department is the most positive and pleasant experience we have had with the DOE."

Response: The Dam Safety Office very much appreciates these comments.

City of Snoqualmie (41) -- "We appreciate the work of the department in providing dam safety reviews and have no objection to the fee increases to support plan review and inspection for new construction or modifications of dams.

Response: The Dam Safety Office very much appreciates these comments.

Jay Gordon, Executive Director, Washington State Dairy Federation (61) "...[F]or the record, [I] want to state that we've had a number of producers that have found that this agency's department provides a pretty good service and we look forward to working with you to get these rules, hopefully whipped in a little better shape."

Response: The Dam Safety Office very much appreciates these comments.

Sheldon Magnuson (84) "Dam safety has been achieved with out [sic] a new onerous fee structure."

Response: According to the American Society of Dam Safety Officials (ASDSO) peer committee that reviewed our program two years ago, we are not performing periodic inspections of existing high and significant hazard dams frequently enough. As a result, the peer review recommended adding new dam safety staff (1 person) to meet this minimum industry standard for safety inspections. The additional fees collected under the proposed fee increase will go to pay for this additional engineer for the Dam Safety Office.

D. Specific questions about the proposed rule and its purpose and context

1. John Boyce, President, Solmar Home Owners Association (22) – What will the consequences be of being unable to pay the proposed fee?

Response: The rule gives the agency freedom for a range of responses, from issuing a regulatory order, to restricting or draining the impounded reservoir, to turning collection of the fee over to a collection agency.

2. Beverly Edwards (47) -- "If dam safety was truly the issue then why is the focus solely on inspection fees? ... No comment is made on improving dam safety such as education or assistance to the landowner to provide safe dams for hazard control."

Response: All governmental services come at some cost to the people governed. The issue here was whether support for the program was to come from general tax revenue, or direct user fees from those making use of the resource (reservoir ownership and Dam Safety Office support). Furthermore, Ecology is continually working on educating dam owners and providing technical assistance on dam safety.

3. Jay Gordon, Executive Director, Washington State Dairy Federation (64) -- What is the meaning of the phrase, "failure of the dam in combination with natural ground"?

Response: An embankment on the edge of a hill has a possibility of having a failure down through the compacted earth embankment, into the subgrade soil. Subgrade soils are frequently less strong and more susceptible to seepage than the compacted embankment soil above it. So the theoretical breach would develop through the dam and into part of the foundation below the embankment. It is possible and has probably happened before.

4. Sheldon Magnuson (74) -- Who sponsored this bill [the legislation authorizing the fee increase] and who voted for it?

Response: Because the direction for establishing this funding source came about through provisos in the House and Senate biennial budget bills, the sponsors would be the budget negotiators and, technically, all Legislators who voted for the budget would be those who supported the bill. The original budget, which included the dam inspection fee proviso, was developed by OFM and the Governor's office.

5. Sheldon Magnuson (82) -- "Is it in the public interest to bring to light a 1917 law that has been basically 'sunsetting' through the passage of time? This is a dangerous precedent. Are there not fairer and more equitable ways of raising revenue?"

Response: There was no attempt in statute to "sunset" dam safety legislation. The current funding for dam safety is a combination of user fees and general tax revenue. It would appear either equitable or unfair depending upon whether or not one supports user fees.

6. Sheldon Magnuson (86) -- "It is still very unclear as to which ponds will be required to pay fees. We need clarification on this issue."

Response: Reservoirs that are classified as having high or significant downstream hazard ratings would pay the annual fee. These are being identified for you in another response.

7. Roger McMillan, P.E., McMillan Properties/Briscot Limited Partnership (111) -- How many of these dams are State, County and City dams? Are these governments paying their fair share?

Response: Dam's that are publicly-owned make up 46% of the high and significant hazard dams. The owners of these dams, regardless of municipal charter, are paying the same fees payable by private dam owners.

8. Roger McMillan, P.E., McMillan Properties/Briscot Limited Partnership (114) -- "Why does it take three engineers for May Lake? Why can't one good engineer and one flunky with a scratchpad and a ruler do the job?"

Response: The inspection fees actually assume two engineers per inspection. Typically, a dam project has a combination of soil, structural, and hydrologic issues at work, depending on the type of facility and underlying geology. Different projects require different combinations of the skill-base available in the Dam Safety Office. When a facility has a very high or extremely high hazard associated with it, we are generally reluctant to use any other than our most experienced engineers for at least part of the investigation.

9. Roger McMillan, P.E., McMillan Properties/Briscot Limited Partnership (115) -- "How can I make [May Lake] a 'significant hazard dam'?"

Response: Because the Downstream Hazard setting is a reflection of the number of people who could be affected by a release of the reservoir contents, the answer is to reduce the size of the dam and reservoir so fewer people would be affected by a dam breach flood.

10. Reflection Lake Community Association (139) -- Many association members have time to involve themselves in politics and would like to know, "Who is responsible for reviving the proposed inspection fees?"

Response: Because the direction for establishing this funding source came about through provisos in the House and Senate biennial budget bills, the sponsors would be the budget negotiators and, technically, all Legislators who voted for the budget would be those who supported the bill. The original budget, which included the dam inspection fee proviso, was developed by OFM and the Governor's office.

11. Jack Roening (158) -- "If the inspectors are competent why isn't one adequate?"

Response: Typically, a dam project has a combination of soil, structural, and hydrologic issues at work, depending upon the type of facility and underlying geology. Different projects require different combinations of the skill-base available in the Dam Safety Office. When a facility has a very high or extremely high hazard associated with it, we are generally reluctant to use any other than our most experienced engineers for at least part of the investigation. We always send a minimum of two engineers on an inspection, in order for both to be able to address their issues with the dam and to do any surveying work required.

12. Jack Roening (158) -- Mr. Roening described his own experience with a dam inspection: "Three inspectors came. I could not leave the house because an inspector sat in my living room asking questions and filling out a form for over an hour. Just as the interrogation ended the two came up from the dam. I felt like I was Public Enemy #1 being attacked by a swat team. I could have filled out the form all by myself just fine, there was no need for the inspector in my home. The dam is quite small, what were the two inspectors looking at for an hour?"

Response: We assume Mr. Roening is referring to an inspection made by the Dam Safety Office in 1997. The two dam inspectors spent an hour examining all visual aspects of the dam, took measurements, and surveyed the dam crest elevation in relation to the water level. They also carefully examined the areas downstream from the dam to determine which houses might be inundated by a dam break flood.

13. Jack Roening (159) -- "Did the legislature contact [Dam Safety] or did [Dam Safety] persuade a legislator to sponsor a bill to give [Dam Safety] authority to charge a small group of dam owners exorbitant amounts?"

Response: The proposal to start charging dam safety inspection fees originated with the state Office of Financial Management, working on Governor Locke's budget proposal for the FY 04-06 biennium. The governor's budget bill included the dam safety fees, and was picked up in the House and Senate budget bills. Eventually, a compromise budget passed the Legislature and was signed by the Governor, which included the dam safety fee increase.

14. Jack Roening (159) -- "Did [Dam Safety] attend meetings and testify to influence the legislature to authorize [Dam Safety] to rewrite new charges without any limits? Did [Dam Safety] testify as to how many lives could be saved by hiring more dam inspectors? Who would vote against a bill that would save lives? If the legislators knew the truth they would not have passed this legislation."

Response: Dam Safety did not meet with Legislators to influence their vote. We did respond to a few legislators' questions requesting additional information on dam safety in general. We were not called to testify to the Legislature regarding the fee increases. The original fee proposal drafted by OFM passed through the Legislature with little or no modification.

15. Ron Weson (175) -- "My concern is the dairy lagoons. ... We have...four different lagoons. They're all different sizes. And just a concern on the depth and how many, 10 acre feet, is that the magic number?"

Response: The jurisdictional trigger for dam safety jurisdiction on dairy lagoons is 10 acre-feet of storage at the top of the impounding barrier, regardless of depth.

E. Specific recommendations for changes to the rule proposal

1. Representative Mike Armstrong (3) -- "...I am requesting your consideration for a more gradual increase rather than a 60+%."

Response: During the Public Hearings for this rule revision, a number of suggestions were made on improving Dam Safety Office efficiency to lower costs in performing inspections. Specifically, it was suggested that the department could combine inspections for high hazard dams, rather than doing only one inspection per trip. Ecology concurred with these suggestions and, as a result, the proposed annual high hazard dam periodic inspection fee has been reduced by 14% in the final rule, from \$800 per year to \$688 per year.

2. Beehive Irrigation District (10); **Merdo Capeters**, Lake Marcel Community Club (33) -- Recommend considering the alternative of having private consultants do the inspections to Dam Safety's specifications (private consultants have said they can do the work for between two and three thousand dollars).

Response: In preparing the rule, we considered allowing dam owners to have the option of hiring their own engineer to do the inspections. However, under RCW 43.21A.064(2), the department is directed to inspect all dams, and there is no provision in the statute for the state to allow owners to hire their own engineer in lieu of a state inspection. In order for there to be an alternative allowing owners to hire their own engineer to inspect a dam, the statute would have to be changed by the Legislature. Furthermore, even if an owner could have their own engineer perform the inspection, the department would have to certify that the engineer had suitable experience and qualifications, and we would still have to review and approve the report, incurring a cost that would have to be paid by a fee.

3. Mark Cauchy, Director, Environmental Affairs, Pend Oreille County Public Utility District (37,38) "We suggest that Ecology consider charging for the inspection at the time the inspection occurs, and charge the actual cost to conduct such inspection," and we also recommend language be added to the rule "placing limits on these fees in the future."

Response: Due to the large number of inspections performed each year, keeping track of each expenditure in the process of performing the inspections could lead to additional staff needs just to track expenses. Ecology decided that using average costs was a much more reasonable approach for the department to implement. In addition, prorating the cost of the inspection to an annual payment is intended to make the fee somewhat less burdensome.

The language in the WAC limits annual growth of periodic inspection fees to those established by these amendments, plus annual increases resulting from the "fiscal growth factor." The wording of the rule only allows large fee increases when the fiscal growth factor increases greatly. The fiscal growth factor is a multiplier combining inflation and population increases. It is defined in Chapter 43.135 RCW. The argument made for the application of this factor is that government services and costs should not grow any faster than the population served. The fiscal growth factor is generally used by Ecology to limit fee increases in this manner.

4. City of Snoqualmie (40) -- Requests that Ecology consider the following modifications:

(a) Amend the rule proposal to exempt all impoundments too small to qualify as dams under the National Dam Safety Program (< 25' high, with maximum capacity of < 50 acre-feet) -- annual inspections would still be required, but fee schedule could be reduced for these facilities; or

(b) Amend the proposal to require inspections every twenty years for municipal stormwater detention ponds (with certain attributes; provides suggested criteria for eligibility); or

(c) In combination with one of the above, also amend the rule to provide a reduced-fee schedule for relatively accessible, multiple facilities in relatively close proximity to one another.

The existing and proposed facilities at issue in the City of Snoqualmie are less than five years old, are so small as to not even qualify as dams under the National Dam Safety Program, and have been designed and constructed with Ecology oversight and approval so has to have a low susceptibility to failure. The proposed requirements should acknowledge these factors in establishing the inspection and fee requirements."

Response: (a) The enabling statute (RCW 90.03.350) for dam safety jurisdiction sets the threshold solely at 10 acre-feet of storage. In order to change the threshold to meet the National Dam Safety Program definitions, the statute would have to be changed by the Legislature.

(b) The National Dam Safety Program Act requires participating states to have the "authority to require or perform the inspection, at least once every five years, of all dams and reservoirs that would pose a significant threat to human life and property in case of failure to determine the continued safety of the dams and reservoirs". The FEMA Model State Dam Safety Program actually recommends annual inspections for high hazard dams and inspections every two years for significant hazard dams, including stormwater and flood control dams.

The Corps of Engineers inspects their dams every five years, including flood control dams. The Bureau of Reclamation inspects their dams on a three-year interval. Twenty years is far too long an interval between inspections to be able to catch developing deficiencies in a timely manner. Considering the large number of projects that the department regulates, and the limited resources available, intervals of five years for high hazard dam inspections, and ten years for significant hazard dams were selected as a reasonable compromise.

(c) Reduction of fees was given great consideration, and by combining inspections of high hazard dams, the fees for these dams has been reduced from the proposed \$800 annual fee to \$688 annually.

Even when Ecology has been involved with design and construction, a dam can still deteriorate over time, due to aging of human-made materials, improper operation, or lack of maintenance. Furthermore, Ecology's costs to perform an inspection are the same regardless of whether or not one believes a dam has a low susceptibility to failure. The requirement to inspect the dam is based on the downstream risk, rather than the susceptibility of the dam to failure.

5. Jay Gordon, Executive Director, Washington State Dairy Federation (62,63,65,66) -- "Section 173-175-360 is a section that makes some significant changes for the construction parameters for Dairy lagoons. First of all we appreciate your efforts to establish parameters that will allow for a permit fee reduction in the area of Dairy lagoon construction." ... "...[W]e would like to offer suggestions to the language of 173-175-360(3) (c and d):

(c) The lagoon design conforms with a set of standard plans prepared in accordance with the Federal Natural Resource Conservation storage structure FOTG 313, or lagoon construction design from the Midwest Plan Service that is approved and stamped by a licensed professional engineer.

(d) The NCRS (or its designee), a Conservation District Technician, a private technician certified under the USDA NCRS technical service provider program to oversee lagoon construction or a licensed professional engineer provides periodic oversight of construction to ensure that the facility conforms to standard or engineered plans."

"Verbally your staff has indicated they do not and did not intend the annual inspection to apply to dairy lagoons. The new section 173-175-705, leaves this question a bit open for interpretation. As we have discussed there are virtually no lagoons that represent a significant threat to life or property, and as we have suggested, our farms undergo periodic inspection by the Washington State Department of Agriculture.

We suggest something like a fourth bullet be added to the wording of WAC 173-175-705(1) something like: "Dairy lagoons subject to routine periodic inspection by the Washington State Department of Ecology or the Washington State Department of Agriculture as required by federal or state laws pertaining to nutrient management inspections are not included in the periodic inspection program of this section unless those lagoons represent a high hazard to the safety of life or property."

Response: Mr. Gordon has raised a number of important issues addressing development of a program for waste pond construction and inspection. Specific responses to Mr. Gordon's comments are not included here because of the space which would be necessary to answer them in appropriate detail and, more important, because resolving these issues requires an interactive, iterative process. We anticipate working with Mr. Gordon and other dairy interests to discuss and resolve these issues. However, Ecology has modified the rule to reduce the costs for reviewing plans for dairy waste pond construction in Washington State.

6. Kurt Mayer, Manager, Washington Growers Clearing House Association (100) -- "Fee increases should be more gradual and more closely reflect applying the current fiscal growth factor to the existing fee structure. (Not by increasing the fees by 60+%, then applying the growth factor in each coming year."

Response: If a dam poses a threat to lives in the event of a dam failure, then it is included in the dam inspection program, regardless of the size of the dam or who owns it. The downstream hazard is more dependent on the geographic location of a dam than on the size or type of use. For dams with the same downstream hazard classification, the cost to Ecology to perform the inspection is approximately the same across the state. Obviously, economic cycles and the profitability of a particular project make maintaining and supporting those dams easier or harder depending on the particular use of the facility. Unfortunately, since the statutes and legislative directive require us to recoup the actual cost of the inspections, it is not possible to lessen fees for some dam owners and increase fees for others. However, as outlined in the SBEIS, the department has provided the following features in an effort to reduce the impact of the fees on small businesses and non-profits:

- ☐ The dam safety inspection fees are prorated over the length of the inspection cycle.
- ☐ The construction permit fee is staggered based on dam size rather than being a flat fee.
- ☐ For projects to repair safety deficiencies identified by the department, the fee is set at the lowest level on the fee table, \$1,400

7. Roger McMillan, P.E., McMillan Properties/Briscot Limited Partnership (108,113) -- "Perhaps... another State agency could make a simple inspection every year. Our local phone book is filled with phone numbers of other State agencies."

Fees should be smaller for smaller dams. "A six-acre lake with 10 feet of water should not have to pay the same fee as a 300-acre lake."

Response: A simple inspection every year is a good idea. Our program, like many others, directs this effort towards the owner or operator. It is a simpler inspection to implement, and those most familiar with the project are usually readily available to do the inspection -- and small changes to the dam will be identified more easily by someone frequently at, and therefore very familiar with, the particular facility. Another agency, whether county or state, would be hard-pressed to provide this type of expertise to a private dam owner at frequent intervals.

If a dam poses a threat to lives in the event of a dam failure, then it is included in the dam inspection program, regardless of the size of the dam or who owns it. The downstream hazard is more dependent on the geographic location of a dam, than on the size or type of use.

8. Joseph O'Leary (117) -- WAC 173-175-020 - Applicability. "...[S]eriously consider adding a new subsection 8 that should read in effect "The decision by the Department either from the result of an inspection by the owner or the DOE that calls for a hazardous request certification upgrade or downgrade."

Response: Most dam owners do not have the technical training necessary to properly estimate areas inundated by dam breach floods. A certification by an owner that an area would or would not be affected would be of dubious value. Some estimates of downstream hazard might be extremely underestimated, placing downstream residents at jeopardy. Furthermore, the department addresses this issue by reassessing the downstream hazard as part of each periodic inspection.

9. Joseph O'Leary (118) -- WAC 173-175-250 - Construction record summary. "I'm recommending a section 4 be added that reads in effect, 'That the operation and maintenance manual should be stamped by a professional engineer. And any changes to the operation and maintenance manual would require review and approval by a professional engineer in accordance with state law.'

Response: Submittal of the original O&M Plan to the Dam Safety Office ensures that experienced professional engineers are reviewing these documents. In addition, Ecology makes O&M guidance documents, written by experts in dam design and operation, freely available. They can be obtained on the Dam Safety webpage or by telephone request. Ecology's professional engineers already review and require edits of O&M Manuals and any updates before they are accepted, so requiring the owner to hire a professional engineer to do this would be redundant.

10. Joseph O'Leary (119) -- WAC 173-175-390 - Payment of construction permit fees. "...[T]hese should also include review of the O&M manual that's been approved [for] the design..." ... "I'm finding that since there's a long period of time in between inspection of these dams, operation and maintenance is going to play a key role in any potential failures that could occur."

Response: Review of the O&M Plan typically takes place during the inspection process for a high or significant hazard dam. Satisfactorily passing the inspection requires having a suitable O&M Plan in place for the facility.

11. Joseph O'Leary (120) -- WAC 173-175-500 - Operation and maintenance. In subsection A, "...identification should be of the...the licensed, profession [sic] engineer [responsible] for implementing the plan should be put in its place. WAC 173-175-500(4), "It currently reads..., 'The O&M manual must be updated within 180 days after a periodic inspection has been completed by the Department.' And that again should give, the project engineer has approved the O&M

updates and requires a P.E. stamp of any changes that are being made on a set of stamped O&M manual[s]."

Response: Requiring an experienced professional engineer to revise or develop O&M Plans would be an overly expensive and burdensome requirement. Ecology makes guidance documents for O&M freely available on the Dam Safety webpage and by telephone request. A conscientious dam owner, using these resources written by experts in dam design and operation, could develop a suitable O&M Plan for his or her dam. Furthermore, all O&M Manuals and updates are reviewed by professional engineers at Ecology before being accepted.

12. Joseph O'Leary (121) -- WAC 173-175-510 - Inspection by owner. Subsection (1) should read: "The annual surficial inspections may be conducted by the owner, or by agents designated by the owner," and I would cross out 'or by a professional engineer'."

Response: It is at the owner's option as to whether the agent performing annual inspections on the owner's dam is, or is not, an engineer.

13. Joseph O'Leary (121,127) -- WAC 173-175-510 - Inspection by owner. Subsection (2) should read: "Owners are required to submit a copy of the annual inspection checklist and other...documents which contain the findings resulting from an annual inspection within 30 days following the completion and approved by a P.E. as designated by the owner or agent for the owner."

Response: Requiring a professional engineer to approve an annual inspection report would be an overly expensive and burdensome requirement. Ecology makes guidance documents for O&M freely available on the Dam Safety webpage and by telephone request. A conscientious dam owner using these available resources could easily perform an annual inspection of most facilities. In effect, since annual inspections are submitted to Ecology for filing with previous project documents, annual inspection reports are examined by experienced professional engineers at the department. Also, owners are free to add any material they might want to their annual inspection checklist. Since these forms need to be appropriate to the specifics of the facility, site-specific items are appropriate.

14. Joseph O'Leary (122,127) -- WAC 173-175-520 - Emergency action plans. Subsection (5) should read: "The EAP must be updated within 180 days after a periodic inspection is completed by the Department and stamped by the owner and agent of a designated professional engineer."

Response: Requiring a professional engineer to revise or develop Emergency Action Plans (EAP) would also be an overly expensive and burdensome requirement. Ecology makes guidance documents for development of EAPs freely available, written by experts in dam design and operation. These documents are available on the Dam Safety webpage or by telephone request. A conscientious dam owner using these resources could develop a suitable EAP for his or her dam. In addition, the most important skill in development of an EAP is in the area of emergency management, not engineering.

15. Joseph O'Leary (123,128) -- WAC 173-175-620 - Enforcement. This section "...should read, 'Any dam which is found to be under construction or recently constructed with² prior approval of the plans and specification or is not properly maintained per the requirements of the operation and maintenance manual is in violation of RCW 90.03.350.'

Response: While it is true that dams constructed without prior approval of the plans and specifications by Ecology are in violation of RCW 90.03.350, violations of the Operations and Maintenance (O&M) Plan are not generally enforceable under RCW 90.03.350. Many of the

² It appears that Mr. O'Leary meant to use the word "without," rather than "with" at this point.

recommendations of O&M Plans consist of maintenance intervals and qualitative work that is fairly difficult to measure. However, maintenance can be found to be inadequate under existing Ecology authority, and can be required to be performed to the satisfaction of the Dam Safety Office. Failure to do so can result in reservoir restrictions or abatement of a dam.

16. Joseph O'Leary (124) -- WAC 173-175-705, Periodic inspection program, "[A]gain I want to emphasize a periodic inspection program that doesn't include the needs to address some type of mechanism in the checklist with regard to downstream hazards."

Response: Most dam owners do not have the technical training necessary to properly estimate areas inundated by dam breach floods. A certification by an owner that an area is or is not affected would be of dubious value. Some estimates of downstream hazard might be extremely underestimated, placing downstream residents at jeopardy. Furthermore, the department addresses this issue by reassessing the downstream hazard as part of each periodic inspection.

17. Joseph O'Leary (125,126) -- Mr. O'Leary stated he "wanted to underscore...the need to strengthen [the requirement] citing of the owner oversight by the WAC language on [a] licensed, professional engineer. ... If you don't have a professional engineer take care of those things...an attorney might find cause to also include DOE in a third party lawsuit. And a case in point would be like if you had a low hazard classification that you didn't inspect, and it turns out that it should have been upgraded and it wasn't, that would have meant that there should have been an annual inspection that would have periodically occurred all the time; and since it wasn't there before, that it could a potential liability in a lawsuit."

Response: Requiring a professional engineer to approve or develop all activity at a dam is an overly expensive requirement. Ecology makes guidance documents for O&M freely available, written by experts in dam design and operation; they may be obtained on the Dam Safety webpage or by telephone. A conscientious dam owner using these available resources could safely operate most facilities. Since periodic inspections are performed by Ecology staff engineers, well-experienced in this area, in effect this recommendation is already fulfilled in spirit. Dam owners develop O&M Plans for their facility and typically perform the maintenance prescribed by the O&M Plan. It is difficult to conceive of increasing this responsibility effectively.

18. Representative Mark Schoesler (163) -- "For these conservation structures, I believe it would be in the interest of the department and the general public to use a different tiered approach than the one proposed."

Response: In response to this comment, Ecology added language to the rule's plan review fee section, allowing the department to enter into a Memorandum of Agreement with the NRCS to reduce fees for plan review and construction inspection of these dams. The conservation dam section of the rule is not very developed because these projects have not been discussed by Ecology and the NRCS for a number of years.

19. Representative Mark Schoesler (165) -- "...[T]he proposed rule also allows the department to determine an emergency condition based upon the threat to 'public safety' rather than the current language of 'life.' As there is no definition for 'public safety' in the proposed rules which would limit potential abuses of what this term means, I believe it best to leave 'life' as the measure for making this determination."

Response: The final rule language follows this recommendation. "Public safety" has been changed back to "life" in the rule; we agreed this was reasonable in the absence of a clear definition of "public safety."

20. Wenatchee Heights Reclamation District, Board of Directors (174) -- "Some form of cost adjustment or percentage deduction should be factored in to the proposed fee schedule for entities, like ourselves, that have multiple dam ownership."

Response: An attempt was made to lessen fees for sites that contained more than one regulated unit, such as multi-cell waste ponds, or water supply reservoirs. Since there is some lessening of the cost by performing multiple inspections on one trip to an area, this consideration is already reflected, to some degree, in the reduction made to the periodic inspection fee for high hazard dams. The annual fee for high hazard dams decreased from \$800 to \$688 after considering efficiency recommendations during hearings (i.e., inspecting more than one dam per trip).

21. Chuck Willis, Lake Marcel Community Club (180) – Suggests staggered fee structure for inspections, based on revenue/operating budget of business. (c) Allow private firms to do inspections and reports; would keep costs lower and give them timely information. (d) Lower the dam inspection fees to reflect the actual cost of supporting 2 FTEs.

Response: The basis for assessing fees for periodic inspections is the downstream hazard potential of a dam, i.e., the number of people potentially at risk downstream from a dam. If the dam poses a threat to lives in the event of a dam failure, then it is included in the dam inspection program, regardless of the size of the dam or who owns it. The downstream hazard is more dependent on the geographic location of a dam, than on the size or type of use. For dams with the same downstream hazard classification, the cost to Ecology to perform the inspection is approximately the same across the state.

Obviously, economic cycles and the profitability of a particular project make maintaining and supporting those dams easier or harder depending on the particular use of the facility. Unfortunately, since statutes and legislative directive require us to recoup the actual cost of the inspections, it is not possible to lessen fees for some dam owners and increase fees for others. However, as outlined in the SBEIS, the department has provided the following features in an effort to reduce the impact of the fees on small businesses and non-profits:

- ☐ The dam safety inspection fees are prorated over the length of the inspection cycle.
- ☐ The construction permit fee is staggered based on dam size rather than being a flat fee.
- ☐ For projects to repair safety deficiencies identified by the department, the fee is set at the lowest level on the fee table, \$1,400

22. Chuck Willis, Lake Marcel Community Club (181) – Alternately, fees should reflect actual time required for inspection and report.

Response: The inspection fees were calculated using a “look backwards in time” approach of estimating past expenses and averaging them. In effect, actual time was used and, ideally, will be used to calibrate future costs charged.

23. Chuck Willis, Lake Marcel Community Club (184) – Allow private firms to do inspections and reports; would keep costs lower and give them timely information.

Response: In preparing the rule, we considered allowing dam owners to have the option of hiring their own engineer to do the inspections. However, under RCW 43.21A.064(2), the department is directed to inspect the construction of all dams, and there is no provision in the statute for the state to allow owners to hire their own engineer in lieu of a state inspection. In order for owners to hire their own engineer to inspect their dams, the statute would have to be changed by the Legislature. Furthermore, even if an owner could have their own engineer perform the inspection, the department would have to certify that the engineer had suitable experience and qualifications, and we would still have to review and approve the report, incurring a cost that would have to be paid by a fee.

24. Chuck Willis, Lake Marcel Community Club (185) – Lower the dam inspection fees to reflect the actual cost of supporting 2 FTEs.

Response: The periodic inspection fees were, in fact, calculated to support the FTEs involved in periodic inspections at a rate sufficient to cover travel, the inspection, and the time required to write the necessary report(s).

V. Summary of Public Involvement Actions

Hearing Dates and Locations

- May 26, 2004 – Spokane, eight people attended
- May 27, 2004 – Wenatchee, six people attended
- June 1, 2004 – Lacey, one person attended
- June 3, 2004 – Mount Vernon, seven people attended

Mass Mailings

Ecology sent out two mass mailing regarding the proposed Dam Safety Fee rule. A Notice titled, Frequently Asked Questions about Proposed Fees for Dam Safety Inspection (Ecology Publication No. 04-11-003, February 2004) was mailed to about five hundred interested parties and media contacts in mid-January 2004. The second mailing was the Hearing Notice (Publication No. 04-11-005, April 2004) which was mailed to the same parties in early May 2004.

Advertisements/Newspaper Announcements

The Hearing Notice was also published on May 12, 2004 in the following newspapers:

- ☐ Bremerton Sun
- ☐ Colville Statesman-Examiner
- ☐ Everett Herald
- ☐ Kennewick Tri-City Herald
- ☐ Longview Daily News
- ☐ Olympian
- ☐ Omak-Okanogan Chronicle
- ☐ Seattle Daily Journal of Commerce
- ☐ Skagit Valley Herald
- ☐ Spokane Spokesman Review
- ☐ Tacoma News Tribune
- ☐ Vancouver Columbian
- ☐ Walla Walla Union Bulletin
- ☐ Yakima Herald Republic

VI. Appendices

A. Summaries of all comments³ (alphabetically by commenter) with comment numbers

Representative Mike Armstrong (Wenatchee Heights Reclamation District)

1. I am opposed to the proposal for a proposed increase and annual assessment of Dam-Safety inspection fees. (A1)
2. "Washington farmers are experiencing extreme economic distress. Numerous factors have contributed to the economic decline of some family farms, including substantially reduced crop prices, and increasing foreign competition. Many family farms are owned and operated by families that have devoted their lives to producing quality agricultural products within the state of Washington. These dedicated families have invested significant time, effort, and financial resources into establishing and maintaining productive farms." (A3)
3. "...I am requesting your consideration for a more gradual increase rather than a 60+%. Raising it this amount would cause a financial hardship on our farm families that are already overburdened by other state and federal taxes." (A1, E1)

Jerry Barnes, Secretary/Manager, Whitestone Reclamation District (Letter to Senator Morton)

4. Have no argument with law authorizing tax (RCW 90.04.470) but "...frankly we feel that \$2500.00 is excessive for a few hours work inspecting our dam and writing a report once every five years." ... "...this tax seems excessive for our small irrigation district for 'not much of a dam.'" (A1)
5. "The Whitestone Lake Dam ('the dam that isn't much of a dam' in DOE's words) is small, three feet in elevation, holding about 520 acre feed, [sic, meant to say 'feet'] but it is an important backup to our main storage in Spectacle Lake for drought times such as the past few years." (B2)
6. "We have been in contact with Doug Johnson, supervisor of the dam safety section, and would have to say dealing with Doug and his department is the most positive and pleasant experience we have had with the DOE." (C5)

Beehive Irrigation District (Pearson, Zimmerman, and Hill)

7. Fees are outrageous (A1)
8. Office expense estimate is outrageous (A1)
9. Taxation without representation (A2)
10. Concern that private engineers can't do 5-year inspections and additional costs (E2)

John Boyce, President, Solmar Home Owners Association

11. Hearings are being held on east of Puget Sound, "making it very inconvenient for anyone on the Olympic Peninsula in the west." (C2)

³ Oral comments given at a hearing are indicated by an "(O)" following the name.

12. "Solmar dam and its lake were created by a realty company that went bankrupt and these properties were left in the custody of the Home Owners Association with no monetary support. Most of the resident who were here then either no longer live here or have since died." (A3)

13. The HOA doesn't have legal standing to assess fees on present owners. Maintenance is voluntary; contributions go to pay utility bills, grass cutting and tree pruning on small tract called Sarita Pound Park. (A1, A3)

14. "In short we don't have the money nor the means to collect it to pay for this outrageous fee. (A1, A3)

15. "The state of Washington has paid your salary and maintained your department in the past based on our state tax revenues." (A2)

16. Solmar Lake is fed by the Agnew Irrigation District and is used for some irrigation by home owners, who pay the annual fee imposed by the county. (A3)

17. "The lake has...over 25 years, become a significant wet land and ecological presence for wildlife and fish habitat, so draining the lake is not a good option..." "It is our understanding that removal of wet lands must be balanced by an addition some place of equivalent size and nature." (B1)

18. Have at least 180 residences, "...surrounded by extensive woodlands. We have no fire hydrant protection. The lake is the principal reservoir from which to draw water to combat fire to protect houses and woodlands. The environmental ecology and fire protection resource has become more important over the years." (B1)

19. "This dam and its surrounds are easily accessible for inspection as you well know and show no sign of weakness or seepage." (B2)

20. The SHOA doesn't have "...the income to pay the proposed annual inspection fee. The [SHOA] is a very small group of residents who strive to use our limited resources to maintain the appearance and upkeep of the dam." (A1, A3)

21. "If we could secure some financial grants or state aid or help from a well endowed institution interested in the preservation of an ecological asset, we welcome your help and direction to solicit such funds." (A1, B1)

22. "We do not know the consequences of being unable to meet the proposed fee. We suggest that your hearings include addressing the inability to pay and advise us accordingly." (D1)

James Brewster, Penrith Farms

23. Supports rules that insure safety (A1)

24. Finds fee structure unfair to land owners (A1)

Michael Caine (O)

25. "...I don't think there's really a lot of danger involved in our dams and probably most of the dams that are out there based on the amount of loss of life or damage that has been caused in the past. We know that if one of our dams were to breach that whatever water was in there would also be, as it goes down the creeks, the valley would be dissipated into the other dams also which then again causes it to slow down so that there would be less damage downstream. And probably, even if one of the larger dams, unless our lowest dam was to breach – any of the other

dams breaching would not cause a significant flood downstream because it probably wouldn't even breach the lower dam. (B2)

26. "...I don't see why we should be charged three times as much or because we have three dams on the creek, when there's only one dam that would be that would be a significant problem. ... "...I do object to being charged three times the fee; there're three fees on there. I think that's something that needs to be noted on there." (A1)

27. "I also think that the classification of downstream houses should be looked into very closely because of the significance of what is down there. It sounds like it's a very subjective basis on there saying "Well there's a house down there, so it's a problem." Well, what's in between that house and the dam? Is there something that's going to stop? Is it going to slow it down? Is it going to raise the creek enough that's it's really going to be a problem for them? (B2)

28. "...the public does benefit a lot from the dams that we have. Not only does Jefferson Creek now flow as a year-round stream because of the dams regulating the water, we also have the fire protection angle on there which has not been mentioned. Because of our dams and the water available, if there is a fire they have a good supply of water that basically they're never going to run out of. They can put out a lot of fires with the water in our dams. And also the public does get, as I say, the water regulation system plus the wildlife enhancements that come along with that too. (B1)

Merdo Capeters, Lake Marcel Community Club (O)

29. Regulatory Fairness Act compliance document doesn't address his situation; "it's a recreation lake and supported by the dues that we charge each member in the community. And our budget is roughly \$65,000 a year, so it turns out this \$800 per year will be 63% or 6.3% of our annual budget. And that is much higher than any of the other things in this Fairness Act compliance document. Along with that, we feel that the fees, if they charge them this year in September, our budget is the beginning of the year so we won't have it in our budget actually to pay this amount." (A1, A3)

30. Fees for new construction are graduated according to the size of the dam, but the inspection fees are flat fees, regardless of what size the dam is. Lake Marcel dam is a small dam, "...roughly ...70 feet long and probably...40 or 50 feet across; it's an earthen dam; and there's only a gate bell, so that's the only mechanism on it." The time required to inspect this dam would be much less than for a larger dam with more mechanical things to inspect. "So...that's an unfair thing also." (A1)

31. "...[W]e've had two inspections since I've been there in 20 years. I think one was in '95 and the other one was in 2002. And at that time, two men came out and probably spent no more than about two hours at the dam site itself." The first time a few things were identified, which have been corrected; the second time no problems were identified. This isn't worth \$4,000 for an inspection, even including the office time required to write the report. (C4)

32. "On our last inspection which...will be two years ago in October, we have not even received your report on that. Hopefully if we're going to pay that much money, we'll get better service than that." (C4)

33. A less costly alternative would be to allow private consultants to do the inspections to Ecology's specifications. Private consultants have quoted fees between two and three thousand dollars for an inspection. (E2)

34. The Lake Marcel dam reservoir is 30 acres, which is a little over 6.6 million gallons. Therefore, the downstream risk is on the borderline and Mr. Capeters would like Dam Safety to

consider changing the dam's status from a high downstream hazard to a significant downstream hazard. (B2)

35. Believes there is a gray area regarding whether a dam is in a "significant downstream vs. high downstream area. I know you have the thing about the five houses, but then the potential damage becomes [a judgment] issue. (B2)

Mark Cauchy, Director, Environmental Affairs, Pend Oreille County Public Utility District

36. According to fee schedule, the PUD will be required to pay \$800 a year for an inspection every five years, or \$4,000 for one site visit. We understand that Ecology needs to be compensated for its inspections, but the cost seems high, "even when including travel time." (A1)

37. "We suggest that Ecology consider charging for the inspection at the time the inspection occurs, and charge the actual cost to conduct such inspection. This is similar to what the State Auditor does when they perform audits on public entities." (E3)

38. "We are also concerned that there is no language placing limits on these fees in the future thus creating hardship on operations of small facilities." (A3, E3)

City of Snoqualmie

39. Concerned that proposed inspection schedule and fees "are excessive in the context of relatively small, publicly-maintained, multiple stormwater facilities in close proximity to each other." (A1, A3)

40. Request Ecology consider the following modifications:

- a. Amend proposal to exempt all impoundments to small to qualify as dams under the National Dam Safety Program – NDSP --(< 25' high, with maximum capacity of < 50 acre-feet). Annual inspections would still be required, but fee schedule could be reduced for these facilities.
- b. Alternate: amend proposal to require inspections every 20 yrs for municipal stormwater detention ponds (with certain attributes). Suggest certain criteria for these ponds to be eligible.
- c. In combo with one of above, also amend rule to provide reduced-fee schedule for relatively accessible, multiple facilities in relatively close proximity to one another. (E4)

41. Appreciate Ecology's work in providing dam safety reviews, no objection to fee increases to support plan review/inspection for new/modified dams. But excessive for small facilities that pose very small risk. C of S's existing and proposed facilities are < 5 years old, so small don't qualify as dams under NDSP, "and have been designed and constructed with Ecology oversight and approval so has to have a low susceptibility to failure. The proposed requirements should acknowledge these factors in establishing the inspection and fee requirements." (A1, C5)

June Donais

42. Meetings were not well enough publicized, so "there were not many present." (C1)

43. The suggested fees [are] extremely high. (A1)

44. It "would seem there could be a more reasonable solution. I would not like to see these high fees put into place and strongly disagree with the proposals given at the recent meetings." (A1)

Beverly Edwards

45. The "...title 'Dam Safety Rule' is an effort to misrepresent the real meaning of the amendment. The real purpose is to generate yet another tax revenue." (C3)

46. "This unreasonable tax or inspection fee would be yet another burden to the conscientious landowners [who] have spent considerable time and money to improve their land for wildlife habitat and plant diversity. They should not be penalized for their works." (A1, A3, B1)

47. "If dam safety was truly the issue then why is the focus solely on inspection fees, which is proposed to triple, and large yearly fees? No comment is made on improving dam safety such as education or assistance to the landowner to provide safe dams for hazard control." (C3, D2)

48. "Water is one of our last vanishing resources. It is imperative that people are not discouraged, to value their ponds and wildlife and to make these rights available to all people, not only the people that can pay these large fees." (A3, B1)

Mike and Elwood Edwards

49. As a pond owner, is "appalled at the brazen attempt to extort more money from land owners by this [sic] Department of the State of Washington [sic]." (A2)

50. Most landowners with ponds "went to considerable expense to create them for wildlife and now you want to penalize them for their efforts." (A2, B1)

51. "When will this kind of injustice stop.[sic] Many pond owners are not rich but it seems as though the state wants only the rich to be able to afford any amenities on their land or the land itself for that matter – stop this attempt at bureaucratic taxation!" (A1, A2, B1)

Bill Fountain, Fountain Ranch, Pend Oreille County Diking District #3 (Locke Dam)

52. Writing to "...voice opposition to the proposed new taxes on dam and pond owners in Washington. We feel that the new taxes pose an undue hardship on dam and pond owners and should not be implemented." (A1, A2)

53. "Dams, ponds, and the habitat they create are a benefit to all citizens of the state, not just a few." (A3, B1)

54. The reason many dams were built was to improve safety to the public, and this is true of Locke Dam. "When it was constructed in 1972, it replaced the then existing original beaver dam, which held back very close to the same number of acre feet of water, but at a greatly increased hazard to the public. To place additional burden on the owners for this kind of improvement is counter-productive." (A3, B1)

55. Most owners of "high" or "significant" hazard dams aren't wealthy, and the new taxes will be an additional burden. "That is also true here in Diking District #3, the Locke Dam, where the district does not currently have funds available to pay these fees. Our family farm, with only a few landowners, is the only entity in the district." (A1)

56. "Dam owners are already responsible for the expense of meeting many regulations and criteria for the ongoing maintenance and operation of the dams. These include developing maintenance and operation plans, emergency action plans, and any required remedial actions already being made by Department of Ecology." (A1)

57. With Ecology's emphasis on preserving and creating wildlife habitat, it makes no sense to levy additional taxes that will discourage the entities doing the most to create and sustain the conditions Ecology is trying to promote. "Indeed, tax incentives to continue our efforts and to promote good stewardship would seem more fitting." (A3, B1)

58. "We feel that the proposed amendments and inspection fees are simply a way to raise more revenue and to additionally tax pond and dam owners. We encourage the department and the legislature to rescind the proposal." (A2)

Mitch Gaspar

59. The proposed inspection of privately owned ponds would cause hardship on the individual and secondarily on the wildlife habitat and the environment. (A1, B1)

60. "The potential charges would put extreme pressure on our limited retired incomes." (A1)

Jay Gordon, Executive Director, Washington State Dairy Federation (O)

61. "[F]or the record [I] want to state that we've had a number of producers that have found that this agency's department provides a pretty good service and we look forward to working with you to get these rules...whipped in a little better shape. (C5)

Jay Gordon, Executive Director, Washington State Dairy Federation

62. "...[W]e wish we could have had the discussion about this language sooner in the process." (E5)

63. Concerned that the amendments create more confusion about the actual volume of a dairy lagoon which would be covered by these rules. (E5)

64. "It is not clear to us what is a failure in combination of 'natural ground'? Any help in clarification of this wording would help." (D3)

65. "Section 173-175-360 is a section that makes some significant changes for the construction parameters for Dairy lagoons. First of all we appreciate your efforts to establish parameters that will allow for a permit fee reduction in the area of Dairy lagoon construction." ... "...[W]e would like to offer suggestions to the language of 173-175-360(3) (c and d):

(c) The lagoon design conforms with a set of standard plans prepared in accordance with the Federal Natural Resource Conservation storage structure FOTG 313, or lagoon construction design from the Midwest Plan Service that is approved and stamped by a licensed professional engineer.

(b) The NCRS (or its designee), a Conservation District Technician, a private technician certified under the USDA NCRS technical service provider program to oversee lagoon construction or a licensed professional engineer provides periodic oversight of construction to ensure that the facility conforms to standard or engineered plans." (E5)

66. "Verbally your staff has indicated they do not and did not intend the annual inspection to apply to dairy lagoons. The new section 173-175-705, leaves this question a bit open for interpretation. As we have discussed there are virtually no lagoons that represent a significant threat to life or property, and as we have suggested, our farms undergo periodic inspection by the Washington State Department of Agriculture. We suggest something like a fourth bullet be added to the wording of WAC 173-175-705(1) something like:

- Dairy lagoons subject to routine periodic inspection by the Washington State Department of Ecology or the Washington State Department of Agriculture as required by federal or state laws pertaining to nutrient management inspections are not included in the periodic inspection program of this section unless those lagoons represent a high hazard to the safety of life or property." (E5)

John Krogh, Krogh Livestock and Trading

67. "We oppose Ecology's proposed amendments to the Safety Rule. We do not need inspectors or fees! We object to such intrusion." (A2)

Forest D. Lee

68. Should not be added expense; taxes currently paid should cover cost. (A2)

69. Reasons his dams should be exempt. (B2)

Stan Long (O)

70. "...[T]he whole premise of imposing a fee on dam owner is unnecessary in light of the fact that there has been virtually insignificant loss of life in the entire history of the state of Washington. Only nine lives ever recorded in this state. Seven of them in one disaster in 1932. (B2)

71. "...I do not view the dams in this state, regardless of how many people live downstream – which is a very subjective question of categorization – do not believe that it is necessary to impose on dam owners, any fees to inspect their dams because the consequences of loss of life is virtually inconsequential." (B2)

Sheldon Magnuson (O)

72. "[Our] dams were created with the assistance and encouragement of the local conservation district, and at that time, the Soil Conservation Service. They provide some important flood control for a narrow valley, and provide a lot of public benefit. (B1)

73. "It will be a real hardship if the fees impact more than the one large dam that's at the end of the watershed. This yearly fee is too high." (A1)

74. "You can look at any segment of the population and of our state, and if they were asked to start paying a fee that was discontinued some time after 1917, and based on current rules, laws, and projections – I would imagine that they would not be very happy. We all understand that there [are] shortfalls in the state budget. I would guess that I'm not the only one that resents this sudden revenue enhancement. I am really opposed to this fee structure as such. I'm very curious to see who sponsored this bill, and who voted for it." (A2, D4)

75. "[T]he dam record across the state appears to be very good as far as public safety. I believe that encouraging this fee structure [will lead a lot of people to] lower their actual acre feet in their ponds; thereby they're going to actually have a less efficient pond from the standpoint of flood control...[a]nd perhaps cause some problems that way." (B2)

76. I think it's always a problem when the state wants to enhance [its] revenue [through a particular] Department and [then] place the money into the General Fund, instead of the focused area that...should be addressed. So in this case, the small dam owner or the large dam owner is going to be required to pay a fee. And [the dam owner is] not really going to receive the full benefit of any such inspections. In other words, what we're requested to pay...is going to go into some other fund. (A2)

77. The fees are "...going to cause people to think twice about any new construction which may be required, or again, maintaining their dams and may be they'll just do away with them." (A3, B1)

78. "So once again I'd just like to say I'm opposed to this proposed fee structure. I really think after some 80 years or so that this is totally unfair." (A1)

Sheldon Magnuson

79. "As a pond owner and also as a resource professional (professional forester since 1986), I am very much opposed to the proposed changes to the dam safety rule." (A2)

80. "The costs of inspections should come out of the general fund that all the public pays into. As pond owners we are providing the public with increased wildlife habitat, flood control, and fire protection. We shall be forced into either eliminating such services or charging for them." (A2, A3, B1)

81. "The proposed fees are extremely high for most pond owners. It will prove self defeating to charge for the inspections. Many folks will opt out and lower, (make smaller), or abandon their ponds." (A1, A3, B1)

82. "Is it in the public interest to bring to light a 1917 law that has been basically 'sunsetting' through the passage of time? This is a dangerous precedent. Are there not fairer and more equitable ways of raising revenue?" (A2, D5)

83. "The state is penalizing a group that is adding positively to the riparian environment in a creative and useful way." (A3, B1)

84. "Dam safety has been achieved with out [sic] a new onerous fee structure." (C5)

85. "Public input has not been solicited adequately. Of the 20+ pond owners I contacted, only one knew about this proposal. The notices in the paper were not enough to get the word out in our area." "I do think you need to contact more of those directly affected by the proposal." (C1)

86. "It is still very unclear as to which ponds will be required to pay fees. We need clarification on this issue." (D6)

Mike Matney (Horse Shoe Lake and Dad's Lake)

87. Opposes \$800 tax/fee (A1)

88. Reservoir owners provide public services free of charge (B1)

89. List of twelve public services reservoirs provide (B1)

90. If taxes implemented, many reservoirs will be drained and new construction reduced (B1)

91. County level organizations support reservoirs for above reasons (B1)

92. Dept. is discouraging water conservation "...through taxes and nearly impossible permit and inspection process." (A1, B1)

93. State legislators should look at why state government is "...discouraging and eliminating private reservoirs." (B1)

94. "To discourage conservation...is an injustice to the future generations." (B1)

95. "Taxes gained are miniscule [compared to] the services provided (as above). (A2, B1)

(Mr. Matney attached resolutions by Stevens County Commissioners and PUD supporting water storage.)

Kurt Mayer, Manager, Washington Growers Clearing House Association

96. The WGCHA, a non-profit tree-fruit grower association with about 2,170 members is opposed to the proposed level of inspection and permit fee increases. (A1)

97. The fees are not "reasonable fee increases" which can be passed on to the 'water users' because the customers are family farmers. (A1, A3, C3)

98. Family farmers cannot pass on the increased costs because they are competing in a world market and have no ability to pass on costs to consumers, due to "high local Washington State production/regulatory cost while selling into a domestic and world market dominated by producers with lower taxes and lower user fees." (A1, A3, C3)

99. The 2002 USDA Agricultural Census shows that Washington farmers have decreased by 10.4% since 1997; the Census also showed that 59.4% of WA farmers have gross sales of less than \$9,999; and 17% of tree-fruit orchards have been removed since 2000 (devastating rural economies). (A3)

100. The proposed permit and inspection fee increases will "...have a significant impact on Washington's family farmers. ... The increases should be more gradual and more closely reflect applying the current fiscal growth factor to the existing fee structure, rather than "increasing the fees by 60+%, then applying the growth factor in each coming year." (A3, E6)

Gilbert McGee

101. "I am profoundly disturbed about the proposed tax (in the guise of 'inspection fees') to be levied on dam owners in this state by the Washington Dept. of Ecology." (A1, A2, C3)

102. "I am disgusted that DOE...apparently made no attempt to notify dam owners about the proposed fees of the four hearings in late May/early June." Was tipped-off by another pond owner about the details; this "...other person said he had called a number of dam owners and not one had heard a thing about the proposal or the hearings. (C1)

103. Believes the "vast majority of small dams are for farm/ranch ponds, many built with the assistance of the Soil Conservation Service (now N.C.R.S.) These dams and resultant reservoirs conserve water, provide wildlife habitat and preservation, provide recreation and are aesthetically pleasing. The proposed 'inspection fees' and the even more onerous 'permit fees' for new construction or modification will serve to greatly diminish the creation of new ponds/lakes; thus they are very much anti-environmental." (A1, A3, B1)

104. The fees will also cause financial hardship on many dam owners. "In my own case, living on a Social Security stipend of \$650 per month, instead of plans to preserve my seven-acre lake in a wild and beautiful state, a heritage for my offspring or even perhaps willed to the public, I will be forced to consider selling to a developer for tiny lakeside lots." (A1, A3, B1)

105. "A great deal of fault for this anti-environmental move can be blamed on the Wash. St. Legislature which, in a desperate search for more revenue, has give [sic] the green light to the DOE." (A2, B1)

106. "There isn't a shadow of a doubt that even if a dam may be temporarily exempt from these fees, very soon all will be included." (A2, B1, C3)

Roger McMillan, P.E., McMillan Properties/Briscot Limited Partnership

107. Dismayed to receive letter proposing increased inspection fees; would cost his family partnership \$4,000 for an inspection of May Lake Dam once every 5 years. (A1)

108. "Perhaps, [sic] another State agency could make a simple inspection every year. Our local phone book is filled with phone numbers of other State agencies." (E7)

109. If only 14 small private dams in WA, with half in high hazard category, he calculates Ecology would collect \$45,000 every 5 years just for those dams. "This would be a nice contract for a private engineering firm." (A1)

110. If, of all 936 dams, 1/3 (312) are high hazard, Ecology will be collecting \$561,000 per year. "It would seem that two competent engineers, two "helping hands in the field," and two secretaries could do this job. A private engineering firm would like to have this contract." (A1)

111. How many of these dams are State, County and City dams? Are these governments paying their fair share? (D7)

112. FAQ sheet doesn't show expected fees to be collected; this is misleading. (C3)

113. Fees should be smaller for smaller dams. "A six-acre lake with 10 feet of water should not have to pay the same fee as a 300-acre lake." (E7)

114. "Why does it take three engineers for May Lake? Why can't one good engineer and one flunky with a scratchpad and a ruler do the job?" (D8)

115. "How can I make [May Lake] a 'significant hazard dam'?" (D9)

Tom Nichols (O)

116. "[T]he thing I'd like to say is that I think it's double taxation. I mean we're already being taxed because we have the water on our property. We're paying higher taxes for this. And now we're having to pay a higher fee. I think that the fees should be taken from the higher taxes that we're already paying." (A2)

Joseph O'Leary, Professional Engineer licensed in the state of Washington, and water resources engineer for the City of Bellevue. (O)

117. "WAC 173-175-020, Applicability, page 2. I'm asking the Department to seriously consider adding a new subsection (8) that should read in effect "The decision by the Department either from the result of an inspection by the owner or [by Ecology] that calls for a [hazardous] request certification upgrade or downgrade." ... "[Because] the low hazards classifications [are not] necessarily inspected...[except annual inspections by the owner], ... then there should be something to protect the state from liability [by having a requirement]...in the owner inspection portion of...the checklist that they report any increases in the downstream hazard situation. That's an applicability." ... "And...it's the same thing...under clause 2 that gives them the right to exempt dams...from these regulations as well. So this just gives them more empowerment to address that." (E8)

118. "...WAC 173-175-250, Construction record summary. I'm recommending a section 4 be added that reads in effect '...[T]he operation and maintenance manual should be stamped by a professional engineer.' And any changes to the operation and maintenance manual would require review and approval by a professional engineer in accordance with state law. ...[T]he O&M manual is a standard requirement in a design concept where you have a project engineer who is suppose to develop O&M manuals and since that's stamped, if there's any changes to that then it needs to be done by P.E. as well. (E9)

119. "...WAC 173-175-390, Payment of construction permit fees. [At this time there should also be a] review of the O&M manual that's been approved [for] the design..." "...[S]ince there's a long

period of time in between inspection of these dams, operation and maintenance is going to play a key role in any potential failures that could occur.” (E10)

120. Section 173-175-500, Operation and maintenance, subsection (a), identification should be of...the licensed, profession engineer [responsible] for implementing the plan...” “[S]ubsection 4 [currently reads:] “The O&M manual must be updated within 180 days after a periodic inspection has been completed by the department.” This should be done by the project engineer who approved the O&M updates, and should require a P.E. stamp for any changes made to an officially stamped O&M manual. (E11)

121. “[S]ubsection 173-175-510, Inspection by owner [states:] ‘The annual surficial inspections may be conducted by the owner or by agent(s) designated by the owner.’ Recommends deleting “or by agent(s) and saying instead: “or by a professional engineer.” Subsection (2) of this section [should be changed to read:] “Owners are required to submit a copy of the annual inspection checklist and other...documents which contain the findings resulting from an annual inspection within thirty days following the completion, and approved by a P.E. as designated by the owner or [by an] agent for the owner.” (E12, E13)

122. Section 173-175-520, Emergency action plans, subsection (5), should state: “The EAP must be updated within 180 days after a periodic inspection is completed by the department and stamped by the owner and [by an] agent of a designated professional engineer.” (E14)

123. “Section 173-175-620, Enforcement, [subsection (2)]...should read “Any dam which is found to be under construction or recently constructed with[out?] prior approval of the plans and specification or is not properly maintained per the requirements of the operation and maintenance manual is in violation of RCW 90.03.350.” (E15)

124. Section 173-175-705, regarding ‘Periodic inspection by the department,’ “...again I want to emphasize a periodic inspection program that doesn’t include the needs to address some type of mechanism in the checklist with regard to downstream hazards.” (E16)

125. Mr. O’Leary “...wanted to underscore the need to strengthen [the requirement] that owner oversight [is done by a] licensed, professional engineer. And that’s not only for public safety, or downstream property damage, or for the purpose of water quality, but because of state liability. If you don’t have a professional engineer take care of those things,...an attorney might find cause to also include [Ecology] in a third party lawsuit. And a case in point would be like if you had a low hazard classification that you didn’t inspect, and it turns out that it should have been upgraded and it wasn’t, that would have meant that there should have been an annual inspection that would have periodically occurred all the time; and since it wasn’t there before, that it could a potential liability in a lawsuit.” (E17)

Joseph O’Leary, Professional Engineer licensed in the state of Washington, and water resources engineer for the City of Bellevue.

126. Owners oversight of O&M for low hazard dams should be strengthened. (E17)

127. Recommends 3 items to add to the rule or to owner inspection checklist. (E13, E14)

128. Puts responsibility/liability on owners, putting pressure on owners to do proper O&M. (E15)

June Petersen

129. Was not aware of the hearing regarding the proposed amendments; “...but do know that I was completely unaware that such higher fees are being proposed for having something that is so beneficial to our environment.” (A1, B1, C1)

130. "Ponds create a place for wildlife, including migratory birds. Landowners who are willing to enhance their land for wildlife should not be additionally penalized with unaffordable fees." (B1)

131. With so much sub-division going on "...to provide housing for our...population increase, the ponds are especially beneficial to provide areas for wildlife..." (B1)

132. Ponds also improve air quality and can sometimes be used for fire protection. "I requested our fire department to inspect my place to point out deficiencies. During the inspection, we determined that if the need arose, they could count on coming to my place to fill their water tanks from my pond." (B1)

133. "When one considers the value of ponds, it seems very unreasonable to place an undue burden on citizens by charging them unaffordable rates for doing some [sic] beneficial to all of us." (B1)

134. "As for inspecting dams, if it were determined that my dam truly posed a risk, I would have no objections to do what is necessary to eliminate that risk. But as for paying \$2,500 or \$4,000 to inspect the dam is far too much." (A1)

Reflection Lake Community Association

135. Missed announcement and article in Spokesman Review, so did not attend hearing. (C1)

136. Were aware through conversations with local Ecology staff that fees/inspections were being prepared; having read 2 Ecology fact sheets, "we are now very concerned and upset by what appears to be a grab for General Fund revenue and not a genuine attempt to insure safety for ecological protected areas. (A2)

137. "Reflection Lake qualifies as a 'significant-hazard dam,' has a new 125K/100 year flood prevention designed dam, 55 acres in size of which 35 acres are shallow, large wetlands on both the north and south end, and lies in a natural valley. We have 130 residence[s], half are retired and on a fixed income." (A1, B2)

138. We oppose the amendments to the rule (for a list of six reasons). (A1, A2)

139. Many association members have time to involve themselves in politics and would like to know, Who is responsible for reviving the proposed inspection fees? (D10)

Blanche Roening

140. Unfair to impose an unfair tax on a few citizens (A1, A2)

141. Have never heard of (concerned about) built-in automatic increases (3%/year) (A1)

142. In the past, ponds were considered environmentally beneficial; why no longer worthwhile? (A3, B1)

143. People won't be interested in maintaining projects due to new costs (A3, B1)

144. Feels misled about info given in hearing re: dam-related deaths; would like to know acre feet each dam held. (C3)

Jack Roening

145. This letter is "...an appeal against the proposed changes in regulations and money charged for dam inspections improvement, [sic] modification and building a new dam. (A1)

146. "I have noticed articles in the papers encouraging people to build dams for wildlife benefit, including expedited handling of permits and cost sharing. If Dam Safety (DS) wants to put a stop to building future dams that are a benefit to wild life and people, they only need to continue pushing these new regulations." (A3, B1)

147. "I am asking that my dam be reclassified back to having a Low Downstream Hazard rating, or be given a waiver allowing my dam a non-revocable exempt status. (B2)

148. Why is my Dam a Significant Hazard? DS says it is because one or more people live downstream of his dam; this isn't as good a criterion as, e.g., "...if a dam were to go out; [sic] would it go out slow or fast?" Has a letter from DS inspector saying his would go slow. (B2)

149. Was my dam properly constructed? His dam "...meets or exceeds the criteria for a dam under 15 ft. high that can impound 10 ac. Feet or more. The dam was designed to be exempt from DS regulations. I was not aware that if the dam had any freeboard it was a DS violation. You can impound 9.9 ac.ft. but the dam can't be any higher than the water level. I guess freeboard on a dam makes it unsafe according to DS regulations." (B2)

150. Was my dam designed by a Hydraulic [sic] Engineer? "Yes and periodically was visited by that engineer during construction. The check list I have says nothing about a DS Engineer being required to be present during construction." (B2)

151. Were the people who built my dam Qualified? "Yes. The person that supervised and constructed my dam was a foreman on the earth filled part of the Clark Fork River Hydro-Electric Dam for the Noxon Reservoir [sic], Noxon, Montana." (B2)

152. Do I believe my dam is safe? "Yes. It is very safe. This dam has been in place for 10 years and not shown any sign of weakness." (This is followed by a description of the size and construction materials of his dam and how it was constructed.) (B2)

153. How far is the first home below my dam? "The first house that an instant breach of my dam could reach is ½ mi. and the second is 6/10 mi. away. Now consider that the water would have to flow through a wide thickly brushed canyon and pass through a culvert running under Bulldog Creek Road and then approximately 25 ft. sharp drop before reaching houses. I think even in a worst case scenario there would not be enough energy or water left to do any harm, and remember a DS inspector says if my dam had a problem it would go slow." (B2)

154. 100 year flood. This heading is followed by a description of how he believes his dam would be affected by a 100-year flood, concluding: "It would be unlikely my primary and secondary spillways would not meet the requirements of the 100 year flood." He then discusses at some length his views on why his dam isn't officially exempt, and concludes: "I believe the 10 ft. depth part [of the rule] should be repealed also." (B2)

155. "If DS would like more cooperation from the people what are interested [sic] in the same things they are... [t]hey should make themselves more user friendly. Whenever bad rules and regulations are eased, friction will be reduced and DS public image will be improved." ... "One law does not fit all. Each pond should be judged on an individual basis by a competent DS Engineer." (A1, B1, B2)

156. Trickle Tube Spillway. This heading is followed by a detailed description of his spillway. (B2)

157. Dam Safety [DS] Rule Public Hearing, Spokane, WA, May 26, 2004. This heading is followed by a description of his experience in the hearing, about which he says, "I have as many questions as comments." Critical of the reporting of deaths from small dams: "Statistics like these are misleading and everyone at the hearing felt it was intentional. Full disclosure would have been appropriate. As I see it, loss of life due to small dam failure is insignificant compared to (I can't think of anything to compare it to). It is that insignificant." He then suggested that more

people have lost their lives to cougars and bears in the same (72 year) period and asks whether we should kill all the cougars and bears; he then makes a similar analogy to lives lost to pets, and asks if the state should charge \$250/year for small dogs and \$800/year for large ones. (C3)

158. "DS made it clear that the legislature told DOE – DS to charge dam owners more money and the money went into the General Fund. DS didn't get any of it. Later in the hearing DS said they would get enough to hire 2 additional Dam Engineer Inspectors so DS could have teams of 2 inspectors for small dams and a team of 3 for bigger dams. If the inspectors are competent why isn't one adequate? Perhaps it would be appropriate to hire on [sic, intended to say "one"] inspector for a small house, 2 for big houses and 1 for each unit of an apartment house."

He then described his own experience with a dam inspection: "Three inspectors came. I could not leave the house because an inspector sat in my living room asking questions and filling out a form for over an hour. Just as the interrogation ended the two came up from the dam. I felt like I was Public Enemy #1 being attacked by a SWAT team. I could have filled out the form all by myself just fine, there was no need for the inspector in my home. The dam is quite small, what were the two inspectors looking at for an hour?" (A2, D11, D12)

159. "DS was asked if this hearing was about dam safety or money. DS admitted it was about money. Did the legislature contact DS or did DS persuade a legislator to sponsor a bill to give DS authority to charge a small group of dam owners exorbitant amounts. That is really extortion. Did DS attend meetings and testify to influence the legislature to authorize DS to rewrite new charges without any limits? Did DS testify as to how many lives could be saved by hiring more dam inspectors? Who would vote against a bill that would save lives? If the legislators knew the truth they would not have passed this legislation." (A2, C3, D13, D14)

160. "In my case if this bill is not repealed DS will charge me \$250 a year for owning a one acre Wild Life pond with 5 ac.ft. of water in it for 10 consecutive years and inspect one time, that is \$2,500 per inspection. That is blatant extortion. DS told us that a 3% charge will be added to the \$250 each year to cover inflation. It is unbelievable that any one would stoop that low. DS also explained that if we didn't pay when billed they would turn us over to a collection agency." (A1)

161. "If this legislation is allowed to stand, think of what could happen. Suppose DS wanted more money, all they need to do is send out notices to more dam owners telling them their dam has been reclassified to a significant or high hazard status and start sending a bill every year. It seems the legislators have opened a Pandoras [sic] Box. This legislation should be repealed as soon as the legislature convenes. An injunction should be placed against DOE-DS to stop implementation of this legislation until the legislation [sic] Can [sic] review the repeal request. I am 74 and my wife is 73, we don't need this kind of treatment from DOE Dam Safety." (A1)

Representative Mark Schoesler

162. "Of particular concern to me are the construction and inspection fees being placed on dams which are conservation structures. The high fees associated with having the department approve the plans and then inspect these conservation structures will only dissuade landowners from maintaining or building new conservation dams." ... "Requiring an annual fee of \$250 for an inspection which occurs once every 10 years is not appropriate for these dams which have a very specific and limited purpose." (A1, A3, B1)

163. "For these conservation structures, I believe it would be in the interest of the department and the general public to use a different tiered approach than the one proposed." (A1, B1, E18)

164. "Conservation dams are relatively inexpensive and many cost less than \$10,000 to design and build." ... "These dams are beneficial for recharging water underground and they also provide safety to the public by preventing uncontrolled flooding." (A3, B1)

165. "...[T]he proposed rule also allows the department to determine an emergency condition based upon the threat to 'public safety' rather than the current language of 'life.' As there is no definition for 'public safety' in the proposed rules which would limit potential abuses of what this term means, I believe it best to leave 'life' as the measure for making this determination." (E19)

Pat Stahl

166. "My interest in the proposed rule change stems from the fact that my wife and I are the owners of a small fish farm that services Northeastern Washington. We have three ponds and have a water right to a fourth pond. If the rule changes were to affect our ponds, we would immediately be out of business. We do not produce enough fish to pay for the proposed fees." (A1, A3)

167. "The information I have received on the proposed changes indicate that inspections will probably be done only once every five years, even though the fees will be annual. The inability to inspect every pond is understandable when I consider the number of ponds in our small area that I serve. Effectively, the assessments will be a tax much more than a fee for given services." (A1, A2)

168. "It seems that regulations and their associated expenses proliferate and gradually strangle efforts to sustain small businesses in Washington. They not only make it more difficult to continue the business, they also discourage individual initiative to start something new." ... "Obviously, owners of small ponds are a distinct minority in the state and do not carry much political clout. In spite of that, it is my hope that you will work to make certain that these amendments will not be put into effect, and that you will work to allow people like me to contribute to the economy and ecology of our state." (A3)

Wenatchee Heights Reclamation District, Board of Directors

169. The WHID, "...and all of the Landowners it represents do hereby object to the proposed increase and annual assessment of Dam-Safety inspection fees." (A1)

170. "The agricultural industry in our area is still struggling with a depressed economy and over-regulation." (A3)

171. "Our budgets and associated assessments have been hard hit with prior costly regulatory requirements and mandated improvements to our reservoirs; this will cause a significant hardship to the Landowners we represent." (A3)

172. The "...whole proposed increase of Dam-safety inspection fees are...another hidden Tax, the true benefit goes to the States coffers not to public safety." (A2)

173. "If these proposed inspection fees are allowed to be levied it will increase our annual budget by \$2,100.00 and require the Board of Directors to raise our annual assessments well over the current \$240.00 an acre." (A1)

174. "Some form of cost adjustment or percentage deduction should be factored in to the proposed fee schedule for entities, like ourselves, that have multiple dam ownership." (A3, E20)

Ron Weson, Dairy farmer, Skagit County (O)

175. My concern is the dairy lagoons. ... [O]n our farm we have four different lagoons. They're all different sizes. And just a concern on the depth and how many, 10 acre feet, is that the magic number? If that's the magic number then we just want to make sure that we understand the rules that coming in place. (D15)

176. "[W]e don't have a lot of extra money to pay for all of these fees either. (A1)

177. So as long as you work with the state Dairy Federation and help go over the problems we have and we can get the situation and we won't have any failures. I'm not aware of any failures in lagoons in the state of Washington [in the] last ten, twenty years. But if there are problems, we need to fix them. And we want to help fix them." (B2, E5)

Chuck Willis, Lake Marcel Community Club

178. Proposed fees are innately unfair to small businesses and non-profits. (A1, A3)

179. Above issue not adequately addressed by Small Business Economic Impact Statement. (A3, C3)

180. Suggests staggered fee structure for inspections, based on revenue/operating budget of business. (E21)

181. Alternately, fees should reflect actual time required for inspection and report. (E22)

182. Dam was inspected in October 2002 and haven't yet received the report from Ecology; "I am sure you can understand that we are reluctant to contribute to a fee system that has not provided us with timely information in the past." (C4)

183. Understands fees will support 2 new FTEs; their calculations shows \$422,000 in 2004 and increasing thereafter. "This revenue is much more than the costs of supporting two FTEs." (A1)

184. Allow private firms to do inspections and reports; would keep costs lower and give them timely information. (E23)

185. "Lower the dam inspection fees to reflect the actual cost of supporting 2 FTEs." (E24)

John Wilson

186. Recently received information from someone who attended a hearing in Spokane, who had learned about it from a relative, and said there were only 4 or 5 other pond owners at the hearing. Since then he has spoken with 9 other pond owners who also had no knowledge about Ecology's proposal. "I don't know what the law requires of the State for public disclosure, but it seems obvious that the public was not adequately informed of the 4 hearings, which were held in the State between May 26 and June 3, 2004. That along with the very short public comment period means that most people who will be negatively impacted by these proposals will never know of them or have an opportunity to comment about them before the...deadline." (C1)

187. He has talked to some people who "...didn't realize that acre-feet are not just a measurement of surface area but of the total depth as well. So for example: A one acre pond with an average depth of 10 feet, would equal 10 acre feet." (B2)

188. "Everyone I talked to agreed that the proposed fees are outrageous. At one inspection every 5 years the annual \$800.00 fee would amount to \$4,000.00 per inspection." ... "This is the wrong way for the State to raise revenue." (A1)

189. "Ponds, especially the larger ones, have public values such as providing water for fire protection in rural areas and providing valuable habitat for many kinds of wildlife. Since most pond owners are not wealthy, but just ordinary people, the proposed fees will not only place a financial hardship on present pond owners, but will also discourage the construction of new ponds and the creation of more valuable wildlife habitat and fire protection. These proposals are not only unfair; they are also not in the best interest of the public." (B1)

190. For the above reasons, "...if the State railroads these proposals through, some pond owner's have discussed forming a 'Pond Owner's Association' and hiring attorneys to investigate the legal basis for a 'Class Action Lawsuit' against the State. I hope the State will reconsider and withdraw these proposals. Otherwise I will join the 'Pond Owner's Association.'" (A1, A2)

B. Transcripts of Oral Comments

Spokane Hearing, May 26, 2004

Stan Long--My name is Stan Long. I'm a resident of Stevens County. I have a dam on my property that holds back about 22 acre feet as I recall. I think the whole premise of imposing a fee on dam owner is unnecessary in light of the fact that there has been virtually insignificant loss of life in the entire history of the state of Washington. Only nine lives ever recorded in this state. Seven of them in one disaster in 1932. And in light of that, I do not view the dams in this state, regardless of how many people live downstream -- which is a very subjective question of categorization -- do not believe that it is necessary to impose on dam owners, any fees to inspect their dams because the consequences of loss of life is virtually inconsequential.

Sheldon Magnuson--I'm Sheldon Magnuson. I'm part owner of several dams in a watershed in Pend Oreille County. These dams were created with the assistance and encouragement of the local conservation district, and at that time, the Soil Conservation Service. They provide some important flood control for a narrow valley, and provide a lot of public benefit. Our family is blessed with several dams. It will be a real hardship if the fees impact more than the one large dam that's at the end of the watershed.

This yearly fee is too high. You can look at any segment of the population and of our state, and if they were asked to start paying a fee that was discontinued some time after 1917, and based on current rules, laws, and projections -- I would imagine that they would not be very happy. We all understand that there is shortfalls in the state budget. I would guess that I'm not the only one that resents this sudden revenue enhancement. I am really opposed to this fee structure as such. I'm very curious to see who sponsored this bill, and who voted for it.

I have to agree with Mr. Stan Long that the dam record across our state by what appears to be -- the dam record across the state appears to be very good as far as public safety. I believe that encouraging this fee structure what a lot of folks are going to do is lower their actual acre feet in their ponds; thereby they're going to actually have a less efficient pond from the standpoint of flood control. And perhaps cause some problems that way.

I think it's always a problem when the state wants to enhance their revenue on a Department and place the money into the General Fund, instead of the focused area that is being, that should be addressed. So in this case, the small dam owner or the large dam owner is going to be required to pay a fee. And he's not really going to receive the full benefit of any such inspections. In other words, what we're requested to pay for is going to go into some other fund.

This is going to cause people to think twice about any new construction which may be required, or again, maintaining their dams and may be they'll just do away with them. So once again I'd just like to say I'm opposed to this proposed fee structure. I really think after some 80 years or so that this is totally unfair. And I'd like to reserve some comments for the written portion. Thank you.

Michael Caine--My name is Michael Caine. I'm part of the Wells' family ranch. We have our dams along Jefferson Creek in Pend Oreille County. A little history of our dams -- In the 1940s to 50s, beavers were introduced into that area and so beaver dams were built. At the time Jefferson Creek did not run all the way down into Spokane County. With the addition of the beaver dams which regulated the flow, Jefferson Creek became a year-around creek; although it did sink a couple miles after it got into Spokane County.

We, my uncle decided to build these dams in the 60s and 70s, with the help of the Soil Conservation Service as Sheldon Magnuson before had spoke. We had also an engineer who came in and engineered the dams so that they met all the specifics. The one thing that they did come later and said that we needed to increase our spillway size which we more than doubled the spillway size on each of the dams so that they had very significant spillway capabilities.

So I don't think there's really a lot of danger involved in our dams and probably most of the dams that are out there based on the amount of loss of life or damage that has been caused in the past. We know that if one of our dams were to breach that whatever water was in there would also be, as it goes down the creeks, the valley would be dissipated into the other dams also which then again causes it to slow down so that there would be less damage downstream. And probably, even if one of the larger dams, unless our lowest dam was to breach – any of the other dams breaching would not cause a significant flood downstream because it probably wouldn't even breach the lower dam.

So I don't see why we should be charged three times as much or because we have three dams on the creek, when there's only one dam that would be that would be a significant problem. I also think that the classification of downstream houses should be looked into very closely because of the significance of what is down there. It sounds like it's a very subjective basis on there saying "Well there's a house down there, so it's a problem." Well, what's in between that house and the dam? Is there something that's going to stop? Is it going to slow it down? Is it going to raise the creek enough that that's it's really going to be a problem for them? So there needs to be much more of a look at that.

Also it seems to me that the public does benefit a lot from the dams that we have. Not only does Jefferson Creek now flow as a year-round stream because of the dams regulating the water, we also have the fire protection angle on there which has not been mentioned. Because of our dams and the water available, if there is a fire they have a good supply of water that basically they're never going to run out of. They can put out a lot of fires with the water in our dams. And also the public does get, as I say, the water regulation system plus the wildlife enhancements that come along with that too.

So I do object to being charged three times the fee; there're three fees on there. I think that's something that needs to be noted on there. That people need to know that they have more than one dam on a creek that that needs to be looked at very significantly. And perhaps we'll try to get something in writing to Department of Ecology. Thank you.

Wenatchee Hearing, May 27, 2004 – No oral comments.

Lacey Hearing, June 1, 2004

Jay Gordon--I'll make it very quick. Hi. My name is Jay Gordon. I am the Executive Director for the Washington State Dairy Federation. Thank you for holding this hearing and providing a chance to listen to comments, good discussion, a lot of questions answered. I look forward to providing more comment over the next couple of days, and for the record want to state that we've had a number of producers that have found that this agency's department provides a pretty good service and we look forward to working with you to get these rules, hopefully whipped in a little better shape. Thank you.

Mount Vernon Hearing, June 3, 2004

Joseph O'Leary--My name is Joseph O'Leary. I'm a professional licensed engineer in the state of Washington. I'm also a water resources engineer for the City of Bellevue. If you can refer to the Amendatory Sections that you handed, I'd like to make comments in relation to those sections. The first section is WAC 173-175-020, Applicability, page 2. I'm asking the Department to seriously consider adding a new subsection 8 that should read in effect "The decision by the Department either from the result of an inspection by the owner or the DOE that calls for a haz request certification upgrade or downgrade."

What I mean by that, I'm asking from my understanding since the low hazards classifications don't necessarily inspected, I think what I'm getting at is that it means the owner

inspection, annual inspections are going to be required, then there should be something to protect the state from liability to have at least in the owner inspection portion of that, in the checklist, that they report any increases in the downstream hazard situation. That's an applicability. Anyway I just think that decision should be added by the Department to have that upgrade or downgrade. And that's, it's the same thing that's under clause 2 that gives them the right to exempt dams that they may elect from these regulations as well. So this just gives them more empowerment to address that.

Next I'd like to move on to page 7, WAC 173-175-250, Construction record summary. I'm recommending a section 4 be added that reads in effect "That the operation and maintenance manual should be stamped by a professional engineer. And any changes to the operation and maintenance manual would require review and approval by a professional engineer in accordance with state law." That's because the O&M manual is a standard requirement in a design concept where you have a project engineer who is suppose to develop O&M manuals and since that's stamped, if there's any changes to that then it needs to be done by P.E. as well.

Let's move on to WAC 173-175-390, Payment of construction permit fees. ___ these should also, after four, that these should also include review of the O&M manual that's been approved by the design should also be reviewed also. I think that's, I'm finding that since there's a long period of time in between inspection of these dams, operation and maintenance is going to play a key role in any potential failures that could occur.

Section 173-175-500, Operation and maintenance, subsection A, identification should be of the individual. The individual should taken, the identification of the licensed, profession engineer for implementing the plan should be put in its place. Page 15, again subsection 4, I may be repetitive and not have particularly the right section here, but I think you'll get the general idea if what I'm getting at. Section, yeah, it's the same subsection I repeated early 175-500. It currently reads to the change, subsection 4, "The O&M manual must be updated within 180 days after periodic inspection has been completed by the Department." And that again should give, the project engineer has approved the O&M updates and requires a P.E. stamp of any changes that are being made on a set of stamped O&M manual.

Subsection, I'm sorry, 173-175-010, Inspection by owner – "The annual surficial inspections may be conducted" – I'm reading subsection 1, second paragraph, "The annual surficial inspections may be conducted by the owner, or my agents designated by the owner, and I would cross out or by a professional engineer. And subsection 2 of that same section "Owners are required to submit a copy of the annual inspection checklist and other, with documents which contain the findings resulting from an annual inspection within 30 days following the completion and approved by a P.E. as designated by the owner or agent for the owner."

Page 17, same section 173-175-510, subsection – I'm sorry, let me correct that – It's 173-175-520, Emergency action plans, subsection 5, "The EAP must be updated within 180 days after a periodic inspection is completed by the Department and stamped by the owner and agent of a designated professional engineer."

173-175-620, Enforcement, it's on page 18, should read "Any dam which is found to be under construction or recently constructed with prior approval of the plans and specification or is not properly maintained per the requirements of the operation and maintenance manual is in violation of RCW 90.03.350. Page 19, Periodic inspection program, again I want to emphasize a periodic inspection program that doesn't include the needs to address some type of mechanism in the checklist with regard to downstream hazards.

And I think in closing I just wanted to emphasize, I wanted to underscore the need to strengthen the citing of the owner oversight by the WAC language on licensed, professional engineer. And that's not only for public safety, or downstream property damage, or for the purpose of water quality, but because of state liability. If you don't have a professional engineer take care of those things, you could be subject, well basically, an attorney might find cause to also include DOE in a third party lawsuit. And a case in point would be like if you had a low hazard classification that you didn't inspect, and it turns out that it should have been upgraded and it wasn't, that would have meant that there should have been an annual inspection that would have periodically occurred all the time; and since it wasn't there before, that it could a potential liability in a lawsuit. That's all I have. I thank everybody for the opportunity. We thank you again.

Merdo Capeters--He's the engineer. First of all, I'm Merdo Capeters and this is Chuck Willis. Thank you for the opportunity of going over the issues that we feel are unjust on our particular situation which is Lake Marcel in Carnation, Washington. And Chuck will go over the details. We've actually sent a letter so you have written information also. We feel that under the Regulatory Fairness Act compliance document that our particular community, it's a recreation lake and supported by the dues that we charge each member in the community. And our budget is roughly \$65,000 a year, so it turns out this \$800 per year will be 63% or 6.3% of our annual budget. And that is much higher than any of the other things in this Fairness Act compliance document.

Along with that, we feel that the fees, if they charge them this year in September, our budget is the beginning of the year so we won't have it in our budget actually to pay this amount. Also we feel that in the fee documents for dams, new construction, the permit fees are graduated to the size of the dam, where the inspection fees are a flat fee across the, not depicting or saying what size the dam is. And we feel that our dam being a small dam, roughly probably 70 feet long and probably, I don't know, 40 or 50 feet across, it's an earthen dam; and there's only a gate bell so that's the only mechanism on it, that the inspection time for that would be very much smaller than a larger dam with more mechanical things to inspect. So we show that's an unfair thing also.

And the other thing is that we've had two inspections since I've been there in 20 years. I think one was in '95 and the other one was in 2002. And at that time, two men came out and probably spent no more than about two hours at the dam site itself. And the last time they didn't find anything that we had to do. The first time there were a few things which we corrected. So I wouldn't think that that's worth \$4,000 for an inspection. I realize there's some office time too. On our last inspection which was two years, well, will be two years ago in October, we have not even received your report on that. Hopefully if we're going to pay that much money, we'll get better service than that.

We did check with some private consultants and they said, they quoted us fees between 2 and 3 thousand dollars for inspection. So that would be an alternative to let us do the inspection with private consultant to your specifications. That's an alternative to look at. And of course you sort of explained the fees, it looked like in the list we got, the amount you'd collect would be more than enough to pay for two engineers. But I now understand that it's not quite as much as we had figured. So that's been cleared up.

One other thing I would like to add is under WAC, on page 21, WAC section 173-75-765, Periodic inspection fee schedule, in lieu of the situation like we have -- it's a 30 acre dam which is a little over 6.6 million gallons. And the fact that the downstream risk is on the borderline, and I'd like some consideration that we be changed from a high, downstream hazard to a significant downstream hazard in lieu of the circumstances that our dam -- it's a gray area in between what puts one in significant downstream vs. high, downstream area. I know you have the thing about the five houses, but then the potential damage becomes judgmental issue. We'd like some consideration in that area -- Lake Marcel in Carnation, Washington. Thank you.

Tom Nichols--Basically, I'd just like to say that my name's Tom Nichols, but the thing I'd like to say is that I think it's double taxation. I mean we're already being taxed because we have the water on our property. We're paying higher taxes for this. And now we're having to pay a higher fee. I think that the fees should be taken from the higher taxes that we're already paying. And that's basically it.

Ron Weson--I'm Ron Weson, dairy farmer in Skagit County. My concern is the dairy lagoons. You went over that a little earlier. We have, on our farm we have four different lagoons. They're all different sizes. And just a concern on the depth and how many, 10 acre feet, is that the magic number? If that's the magic number then we just want to make sure that we understand the rules that coming in place. And we don't have a lot of extra money to pay for all of these fees either. So as long as you work with the state Dairy Federation and help go over the problems we have and we can get the situation and we won't have any failures. I'm not aware of any failures in lagoons in the state of Washington last ten, twenty years. But if there are problems, we need to fix them. And we want to help fix them. Thank you.

C. Copies of Written Comments

Individuals providing written comments⁴

Representative Mike Armstrong

Jerry Barnes, Secretary/Manager, Whitestone Reclamation District

Beehive Irrigation District

John Boyce, President, Solmar Home Owners Association

James Brewster, Penrith Farms

Mark Cauchy, Director, Environmental Affairs, Pend Oreille County Public Utility District

City of Snoqualmie

June Donais

Beverly Edwards

Mike and Elwood Edwards

Bill Fountain, Fountain Ranch, Pend Oreille County Diking District #3 (Locke Dam)

Mitch Gaspar

Jay Gordon, Executive Director, Washington State Dairy Federation

John Krogh, Krogh Livestock and Trading

Lake Marcel Community Club (See Merdo Capeters and Chuck Willis)

Forest D. Lee

Sheldon Magnuson

Mike Matney (Horse Shoe Lake and Dad's Lake)

Kurt Mayer, Manager, Washington Growers Clearing House Association

Gilbert McGee

Roger McMillan, P.E., McMillan Properties/Briscot Limited Partnership

Joseph O'Leary

Pend Oreille County Diking District #3 (See Bill Fountain)

Pend Oreille County Public Utility District (See Mark Cauchy)

⁴ The order of this list is the same order in which the written comments are arranged.

Penrith Farms (See James Brewster)

June Petersen

Reflection Lake Community Association

Blanche Roening

Jack Roening

Representative Mark Schoesler

Solmar Home Owners Association (See John Boyce)

Pat Stahl

The City of Snoqualmie (See City of Snoqualmie)

Washington Growers Clearing House Association (See Kurt Mayer)

Washington State Dairy Federation (See Jay Gordon)

Wenatchee Heights Reclamation District, Board of Directors

Whitestone Reclamation District (See Jerry Barnes)

Chuck Willis, Lake Marcel Community Club

John Wilson

STATE REPRESENTATIVE
12th DISTRICT
MIKE ARMSTRONG

State of
Washington
House of
Representatives



STATE GOVERNMENT
RANKING REPUBLICAN
MEMBER
TRANSPORTATION
CAPITAL BUDGET

June 17, 2004

David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Regarding: Proposed Dam Safety Inspection Fees

Dear Mr. Cummings,

Recently I received correspondence regarding a proposed increase and annual assessment of Dam-Safety inspection fees. I am opposed to this proposal.

Washington farmers are experiencing extreme economic distress. Numerous factors have contributed to the economic decline of some family farms, including substantially reduced crop prices, and increasing foreign competition. Many family farms are owned and operated by families that have devoted their lives to producing quality agricultural products within the state of Washington. These dedicated families have invested significant time, effort, and financial resources into establishing and maintaining productive farms.

For that reason, I am requesting your consideration for a more gradual increase rather than a 60+ % . Raising it this amount would cause a financial hardship on our farm families that are already overburdened by other state and federal taxes.

Sincerely,

A handwritten signature in cursive script that reads "Mike Armstrong".

Mike Armstrong
State Representative
12th District

cc: Kirk B. Mayer
Wenatchee Heights Reclamation District

WHITESTONE RECLAMATION DISTRICT

LOOMIS WASHINGTON 98827

February 12, 2004

State Senator Bob Morton
P.O. Box 40407
Olympia, WA 98504-0407

Dear Senator Morton,

Today, our irrigation district received a letter from the DOE Dam Safety Section notifying us of upcoming changes to the Dam Safety REGulation, WAC 173-175. This rule revision would result in an annual tax of \$500.00 to our district. This annual tax would reimburse the DOE for their periodic (every five years) inspection of our Whitestone Lake Dam.

While we can not argue with the law that authorizes this tax, (RCW 90.04.470) frankly we feel that \$2500.00 is excessive for a few hours work inspecting our dam and writing a report once every five years.

The Whitestone Lake Dam ("the dam that isn't much of a dam" in DOE's words) is small, three feet in elevation, holding about 520 acre feed, but it is an important backup to our main storage in Spectacle Lake for drought times such as the past few years.

We have been in contact with Doug Johnson, supervisor of the dam safety section, and would have to say dealing with Doug and his department is the most positive and pleasant experience we have had with the DOE. None the less this tax seems excessive for our small irrigation district for "not much of a dam". We will plan on attending one of the public hearings to deliver our message, and would appreciate any help your office could give to implement this proposal in a financially responsible manner.

Sincerely,



Jerry Barnes
Secretary/Manager

enc.

BEEHIVE IRRIGATION DISTRICT
3298 Squilchuck Road
Wenatchee, WA 98801

7 June 2004

David Cummings
Water Resources Program
P. O. Box 47600
Olympia, Washington 98504-7600

Re: Proposed Amendments to the Dam Safety Rules—Dam Inspection Fees

Dear Mr. Cummings:

Beehive Irrigation District has had an excellent working relationship with Department of Ecology's Dam Safety Division through the years.

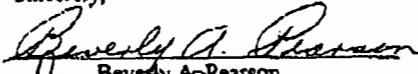
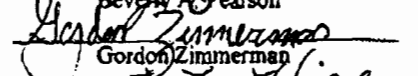
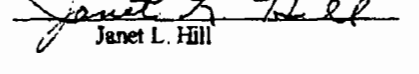
In Ecology's news release, Curt Hart is quoted as saying, "We don't think these fees are outrageous." We disagree with this statement – these fees are outrageous. A fee of \$800.00 per year, with inspection at five-year intervals equates to a fee of \$4000.00 per inspection. At the hearing in Wenatchee, May 27, 2004, we were told that a typical field inspection costs about \$1330.00 and the remaining \$2670.00 is considered "office expense." That is outrageous.

At the hearing, it was suggested the inspection fees be 'passed on' to the water users. Assessing water users for these proposed fees constitutes an additional TAX on our already overburdened taxpayers. When this type of fee is 'passed on' to the people, it becomes "taxation without representation" and is not acceptable.

By the proposed amendments, Ecology is given sole authority for the 5-year inspections. This eliminates the possibility of private engineer inspections without additional costs to the irrigation district and ultimately to the water users.

We feel these proposed amendments should be rejected.

Sincerely,


Beverly A. Pearson

Gordon Zimmerman

Janet L. Hill

Cc: Senator Linda Evans Parlette
661-15 Wheeler Hill Road
Wenatchee, WA 98801

Representative Mike Armstrong
1684 Pitcher Canyon Road
Wenatchee, WA 98801

Representative Cary Condotta
909 Briarwood Drive
East Wenatchee, WA 98802

**David Cummings
Water Resources Program
P.O.Box 47600
Olympia, Wa. 98504-7600**

May 26th 2004

Dear Mr Cummings

This is the Solmar Home Owners Associations response to your request for written comments on Proposed Amendments to the Dam Safety Rules, Chapter 173-175 WAC.

1. Firstly these hearings are being held on the eastern side of Puget Sound making it very inconvenient for anyone on the Olympic Peninsula in the west.

2. Solmar dam and its lake were created by a realty company that went bankrupt and these properties were left in the custody of the Home Owners Association with no monetary support.

Most of the residents who were here then either no longer live here or have since died.

3. The Solmar Home Owners Association has no legal standing to assess any of the present owners for financial support. Voluntary contributions and manual labor has maintained the dam slopes and surrounds for 25 years. In short we have not had any significant income. What contributions we do get are used to pay utility bills for two street lights, occasional grass cutting and tree pruning on a small tract called Sarita Pound Park.

4. In short we don't have the money nor the means to collect it to pay for this outrageous fee. The State of Washington has paid your salary and maintained your department in the past based on our state tax revenues.

5. The Solmar lake has been fed by the Agnew Irrigation District and is used for some irrigation by home owners, who pay the annual fee imposed by the county. The lake has, for over 25 years, become a significant wet land and ecological presence for wildlife and fish habitat, so draining the lake is not a good option after 25 years of existence. It is our understanding that removal of

wet lands must be balanced by an addition some place of equivalent size and nature.

6. The Solmar development has at least 180 residences surrounded by extensive woodlands. We have no fire hydrant protection. The lake is the principal reservoir from which to draw water to combat fire to protect houses and woodlands. The environmental ecology and the fire protection resource has become more important over the years. This dam and its surrounds are easily accessible for inspection as you well know and show no sign of weakness or seepage.

7. The summation of our comments is not complex. The Solmar Home Owners Association do not have the income to pay the proposed annual inspection fee. The Solmar Home Owners Association is a very small group of residents who strive to use our limited resources to maintain the appearance and upkeep of this dam.

8. If we could secure some financial grants or state aid or help from a well endowed institution interested in the preservation of an ecological asset, we welcome your help and direction to solicit such funds.

9. We do not know the consequences of being unable to meet the proposed fee. We suggest that your hearings include addressing the inability to pay and advise us accordingly.



John R. Boyce, President Solmar Home Owners Association
581 Pinnell Road
Sequim, WA 98382

Phone. 360-683-8445

FROM : SMALL PLANET*PENRITH FARMS

FAX NO. : 5094472708

Jun. 10 2004 11:51AM P2

Communication Cooperation Completion

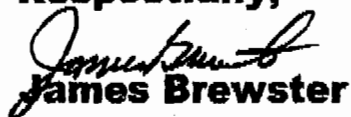


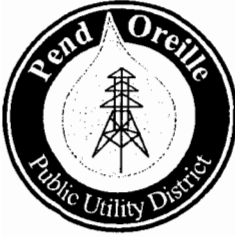
**662 Scotia Road
Newport, Washington 99156
(509) 447-0665**

**David Cummings
Water Resource Program**

I am writing this letter in response to the Proposed Amendments to the Dam Safety Rule, Chapter 173-175 WAC. I support the implementation of rules that insure safety but find the fee structure unfair to the land owners. I hope that you will find a more reasonable solution to this issue. I am also sending copies of this letter to my State Representatives.

Respectfully,


James Brewster



Pend Oreille County Public Utility District

Administrative Offices - P.O. Box 190 • Newport, WA 99156 • (509) 447-3137 • FAX (509) 447-5824
Box Canyon Hydro Project - P.O. Box 547 • Ione, WA 99139 • (509) 446-3137 • FAX (509) 447-6790

June 1, 2004

David Cummings
Water Resources Program
P.O. Box 47600
Olympia, Washington 98504-7600

Re: Proposed Amendments to the Dam Safety Rule Chapter 173-175 WAC

Dear Mr. Cummings:

Pend Oreille Public Utility District is submitting comments to the proposed revisions to the Dam Safety Regulations and the institution of new fees for periodic inspections of existing dams and permit fees for new construction or modifications of existing dams.

According to the proposed fee schedule established by the Department of Ecology, the District, as an owner of a state licensed dam, will be required to pay \$800.00 a year for an inspection every 5 years. This means we will be paying \$4,000 for WDOE to make one site visit. While we understand the need for the Department to be compensated for its inspections, the cost for the inspections appears high even when including travel time. We suggest that Ecology consider charging for the inspection at the time the inspection occurs, and charge the actual cost to conduct such inspection. This is similar to what the State Auditor does when they perform audits on public entities. We are also concerned that there is no language placing limits on these fees in the future thus creating hardship on operations of small facilities.

Thank you for the opportunity to comment on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark J. Cauchy".

Mark J. Cauchy
Director, Regulatory & Environmental Affairs

c Bob Geddes, General Manager



Phone (425) 831-1888

Fax (425) 831-1889

PATRICK B. ANDERSON

City Attorney

P.O. Box 924, Snoqualmie, Washington 98065

panderson@ci.snoqualmie.wa.us

June 10, 2004

David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600
FAX (360) 407-7162

Dear Mr. Cummings:

Comments on Proposed Amendments to Dam Safety Rule

Thank you for the opportunity to submit comments on the Department of Ecology's proposed amendments to the Dam Safety Rule, Chapter 173-175 WAC, which would levy annual dam safety inspection fees for regulated dams which are upstream from one or more homes.

The City of Snoqualmie presently owns and maintains one stormwater detention pond which is regulated for dam safety, and anticipates that several additional stormwater ponds being proposed for new development will also be regulated for dam safety. We are concerned that the proposed inspection schedule and associated fees are excessive in the context of relatively small, publicly-maintained, multiple stormwater facilities in close proximity to each other.

We request that the Department consider modifications to the proposed rule so as to recognize urban stormwater ponds as a unique class of dams with appropriately-reduced inspection and fee schedules. Specific suggestions follow.

1. Amend the proposed rule to exempt all impoundments which are too small to qualify as dams under the National Dam Safety Program Act, Public Law 104-303, Section 215. From that public law, the exemption would apply to all embankments which meet the two tests of being less than 25 feet in height and which also have a maximum impoundment capacity of less than 50 acre-feet. Annual surficial inspections specified by WAC 173-175-510-1(a) would still be required. A reduced fee schedule could be devised to support periodic Ecology review of the annual owner inspection reports for the facilities in this category.

Post-It® Fax Note	7671	Date	6-10-04	# of pages	3
To	David Cummings	From	Pat Anderson		
Co./Dept	Ecology	Co.	City of Snoqualmie		
Phone #		Phone #	425-831-1888		
Fax #	360-407-7162	Fax #			

2. Alternatively, amend the proposed rule to allow a reduced inspection schedule of once every 20 years for all municipally owned and maintained stormwater detention ponds which have been constructed to provide flow control consistent with Ecology guidelines, and which present a relatively low hazard notwithstanding the number of dwellings downstream. We would suggest that the eligible ponds would also need to meet the following criteria: 1) a size classification per WAC 173-175 Table 1 of a "Small Dam" with a maximum dam height of less than 15 feet above native ground; 2) the existing dam has been reviewed and approved by Ecology with no unresolved deficiencies or concerns from either the design or construction phase reviews; 3) the stormwater pond is owned and maintained by a public agency stormwater utility which collects stormwater utility fees to fund maintenance activities. Annual surficial inspections specified by WAC 173-175-510-1(a) would still be required. A reduced fee schedule could be devised to support a 20-year cycle of field inspections plus periodic Ecology review of the annual owner inspection reports for the facilities in this category.
3. In combination with one of the above two suggestions, also amend the proposed rule to provide a reduced fee schedule for multiple facilities which are relatively accessible and in reasonably-close proximity. Opportunities for review efficiencies include less preparation time (contacting one versus multiple owners), less travel time, and efficiencies in inspection write-ups since owner information and maintenance practices will be common for multiple reports. Also, because the stormwater ponds are sized for build-out of urban areas, the project hydrology is unlikely to change.

We appreciate the work of the department in providing dam safety reviews and have no objection to the fee increases proposed to support plan review and inspection for new construction or modifications of existing dams. However, the proposed long-term inspections and fees are excessive for relatively-small stormwater facilities which in fact pose a very small threat to human life or property. The existing and proposed facilities at issue in the City of Snoqualmie are less than five years old, are so small as to not even qualify as dams under the National Dam Safety Program, and have been designed and constructed with Ecology oversight and approval so has to have a low susceptibility to failure. The proposed regulations should acknowledge these factors in establishing the inspection and fee requirements.

Thank you for your consideration of our comments. If you should care to discuss this further, please feel free to call me, Pat Anderson at (425) 831-1888, or Kirk Holmes, at (425) 831-4919 extension 12, or Bill Rozeboom of Northwest Hydraulic Consultants at (206) 241-6000.

CITY OF SNOQUALMIE



Patrick B. Anderson
City Attorney

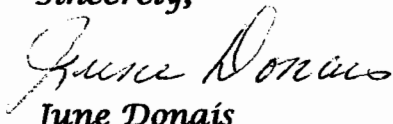
June 2, 2004

Water Resources Program
P.O.Box 47600
Olympia, Wa. 98504-7600

David Cummings,

I have just become aware of meetings held regarding assessments to pond owners in the state of Washington regarding fee structures for inspections. It appears that the meetings were not highly publicized, so there were not many present. I have obtained copies of the information you sent out recently and it seems that the suggested fees were extremely high. At this time we are all being so inundated with fees and taxes etc., it would seem there could be a more reasonable solution. I would not like to see these high fees put into place and strongly disagree with the proposals given at the recent meetings.

Sincerely,



June Donais
1412 Roberts Rd.
Newport, Wa. 99156

June 8 2004

Dept of Ecology,

I would like to comment on
the Dept of Ecology proposal

"Dam Safety Rule 173-175 WAC.

First of all the "little" "Dam Safety Rule"
is an effort to misrepresent the real
meaning of the amendment.

The real purpose is to generate
yet another tax revenue. This unreasonable
tax or inspection fee would be yet
another burden to the conscientious
landowner. These landowners have spent
considerable time & money to improve
their land for wild life habitat
and plant diversity. They should not be
penalized for their works.

If Dam Safety was truly the
issue then why is the focus solely
on initiation fees, which is proposed to
triple, and large yearly fees? No
comment is made on improving
dam safety such as education or
assistance to the landowner to
provide safe dams for hazard control.

Water is one of our last vanishing
resources. It is imperative that people
are not discouraged, to value their
ponds and wildlife and to make those
rights available to all people, not only
the people that can pay these large
fees.

Thank you
Brenda Edwards

ATT. DAVID Cummings

To Dept of Ecology

As a Pond OWNER we are appalled at the
BRAZEN attempt to extort huge money from land
OWNERS, by this Dept of the state of Washington.
Most landowner who have ponds have went to considerable
expense to create them for wildlife and now you
want to penalize them for their efforts, when will
this kind of injustice stop. Many pond owners are
NOT RICH but it seems as though the state wants only
the RICH to be able to afford any amenities on their
land or the land itself for that matter. STOP this
attempt AT BEUROCRATIC TAXATION!

Mike A Edwards
6911 Westispeil Rd
Hok Wa 99180

Elwood S Edwards
5752 Wal Rd
Hok Wa 99180

Fountain Ranch
411481 SR 20
Cusick, Washington 99119
(509) 445-1368

Pend Orielle County Diking District #3
Locke Dam, Locke Washington

June 9, 2004

Department of Ecology
David Cummings
Water Resources Program
PO Box 47600
Olympia, WA 98504-7600

RE: Proposed Amendments to the Dam Safety Rule

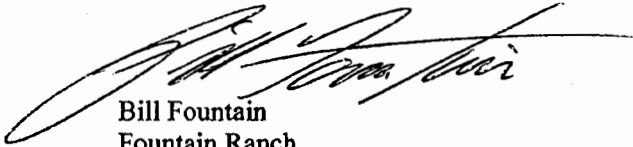
David,

I am writing to voice our opposition to the proposed new taxes on dam and pond owners in Washington. We feel that the new taxes pose an undue hardship on dam and pond owners and should not be implemented.

1. Dams, ponds, and the habitat they create are a benefit to all citizens of the state, not just a few.
2. The very reason many of the dams were built in the first place was to improve safety to the public. That is the case with the Locke Dam. When it was constructed in 1972, it replaced the then existing original beaver dam, which held back very close to the same number of acre feet of water, but at a greatly increased hazard to the public. To place additional burden on the owners for this kind of improvement is counter-productive.
3. Most owners of dams, which meet the criteria for high hazard, or significant hazard dams are not wealthy, and the new taxes will create an additional burden. That is also true here in Diking District #3, the Locke Dam, where the district does not currently have funds available to pay these fees. Our family farm, with only a few landowners, is the only entity in the district.
4. Dam owners are already responsible for the expense of meeting many regulations and criteria for the ongoing maintenance and operation of the dams. These include developing maintenance and operation plans, emergency action plans, and any required remedial actions already being made by Department of Ecology.
5. It seems that with the Department of Ecology's emphasis on preserving and creating wildlife habitat, it makes no sense to levy additional taxes. This discourages the very entities which are doing the most to create and sustain the conditions which the Department is trying to promote. Indeed, tax incentives to continue our efforts and to promote good stewardship would seem more fitting.

We feel that the proposed amendments and inspection fees are simply a way to raise more revenue and to additionally tax pond and dam owners. We encourage the department and the legislature to rescind the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Fountain", with a long horizontal flourish extending to the right.

Bill Fountain
Fountain Ranch
Pend Orielle County Diking District #3

Cc
Senator Bob Morton
Representative Cathy McMorris
Representative Bob Sump

TO WHOM IT MAY CONCERN -

I AM WRITING REGARDING THE
PROPOSED INSPECTION OF PRIVATELY
OWNED PONDS AND THE HARDSHIP
IT WOULD CAUSE ON THE INDIVIDUAL
& SECONDARILY ON THE WILDLIFE
HABITAT AND ENVIRONMENT.

THE POTENTIAL CHARGES WOULD PUT
EXTREME PRESSURE ^{ON} OUR LIMITED
RETIRED INCOMES.

THANK YOU FOR YOUR CONSIDERATION
OF THIS PROBLEM

Mitch Gaspar
PO Box 960
Newport, WA 99156-0960

SINCERELY
MITCH GASPAR

P.S. - COPIES TO - SENATOR BOB MORTON
- REP. CATHY Mc MORRIS
- REP. BOB SUMP
- MA DAVID CUMMINGS OF
DEPT. OF ECOLOGY



Washington State Dairy Federation

David Cummings

Water Resources Program

P.O. Box 47600

Olympia, Washington 98504-7600

dcum461@ecy.wa.gov

Fax 360-407-7162

June 11th, 2004

Re: dam safety

Dear Mr. Cummings, thank you for the opportunity to comment of the dam safety proposal to increase fees. I have verbally expressed some concerns to you and your staff about some areas within this proposal. I hope these written comments will more clearly outline some concerns, areas for process improvement as well as provide some constructive language suggestions.

We have concerns that the amendments to WAC 173-175-020 create more confusion about the actual volume of a dairy lagoon which would be covered by these rules. It is not clear to us what is a failure in combination of "natural ground"? Any help in clarification in this wording would help.

Section 173-175-360 is a section that makes some significant changes for the construction parameters for Dairy lagoons. First of all we appreciate your efforts to establish parameters that will allow for a permit fee reduction in the area of Dairy lagoon construction. One suggestion we have made verbally is we wish we could have had the discussion about this language sooner in the process. That being said, we would like to offer suggestions to the language of 173-175-360 (3) (c and d)... we suggest this language:

C. The lagoon design conforms with a set of standard plans prepared in accordance with the Federal Natural Resource Conservation Service Waste storage structure FOTG 313, or lagoon construction design from the Midwest Plan Service that is approved and stamped by a licensed professional engineer.

D. The NRCS (or it's designee), a Conservation District Technician, a private technician certified under the USDA NRCS technical service provider program to oversee lagoon construction or a licensed professional engineer provides periodic oversight of construction to ensure that the facility conforms to standard or engineered plans.

Verbally your staff has indicated they do not and did not intend the annual inspection to apply to dairy lagoons. The new section 173-175-705, leaves this question a bit open for interpretation. As we have discussed there are virtually no lagoons that represent a significant threat to life or property, and as we have suggested, our farms including the lagoon storage structures are and will continue to undergo periodic inspection by the Washington State Department of Agriculture. We suggest that a fourth bullet be added to the wording of WAC 173-175-705 (1) something like:

- Dairy lagoons subject to routine periodic inspection by the Washington State Department of Ecology or the Washington State Department of Agriculture as required by federal or state laws pertaining to nutrient management inspections are not included in the periodic inspection program of this section unless those lagoons represent a high hazard to the safety of life or property.

Again thank you for the chance to offer these comments. If there is any manner in which I can be of assistance or answer questions regarding any of these suggestions, please contact me at 360-482-3485, or cell number 360-951-8419.

Sincerely,



Jay Gordon
Executive Director

John 509 447-4632
Todd 509 447-3487
8512 Fertile Valley Road
Newport, Washington 99156



KROGH Livestock & Trading

EST. 1902

Mr. DAVID Cummings—
Water Resources—

Sir

We oppose Ecology's proposed
amendments to the safety Rule.

We do not need inspection
or fees. We object to
such intention.

J. Krogh.

Forrest D. Lee
P. O. Box 26
(2205 Jefferson Rd.)
Elk, WA 99009
June 6, 2004

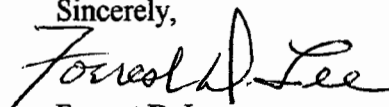
David Cummings
Water Resource Program
P. O. Box 47600
Olympia, WA 98504-7600

Dear Sir,

This letter is in response to the proposed fees for dam safety inspections by Washington State.

1. I feel that this is a service that should not be an added expense, but one which is part of the taxes we pay.
2. Our dams should be exempt from the needed inspection for the following reasons:
 - a. Jefferson Creek is only approximately 2 miles in length, and it goes underground 1.2 miles below our lowest dam.
 - b. Dams were constructed in such a manner (little dam – big dam – smaller dam – big dam) so that any large release of water is trapped by the next dam, etc. (Enclosed please find an aerial view dated August 2000).
 - c. These dams were inspected spring of 1994, and we passed with high marks.
 - d. The dams are “over built” in that all large dams have twice the required over-flow and the bordering road is lower than the top of the dam, so that excess water (not handled by the over-flow pipes) is diverted away from the dam itself.
 - e. Only one residence lies anywhere near the creek bed below our dam, and this consists of two mobile homes pushed together side by side. These have been abandoned for four or five years; at this time they are being torn down and sold for scrap metal.

Thank you for your time and consideration of this letter. If you have any other questions, I can be reached on my cell phone at 425-238-9968.

Sincerely,

Forrest D. Lee

Enclosure: Aerial photo

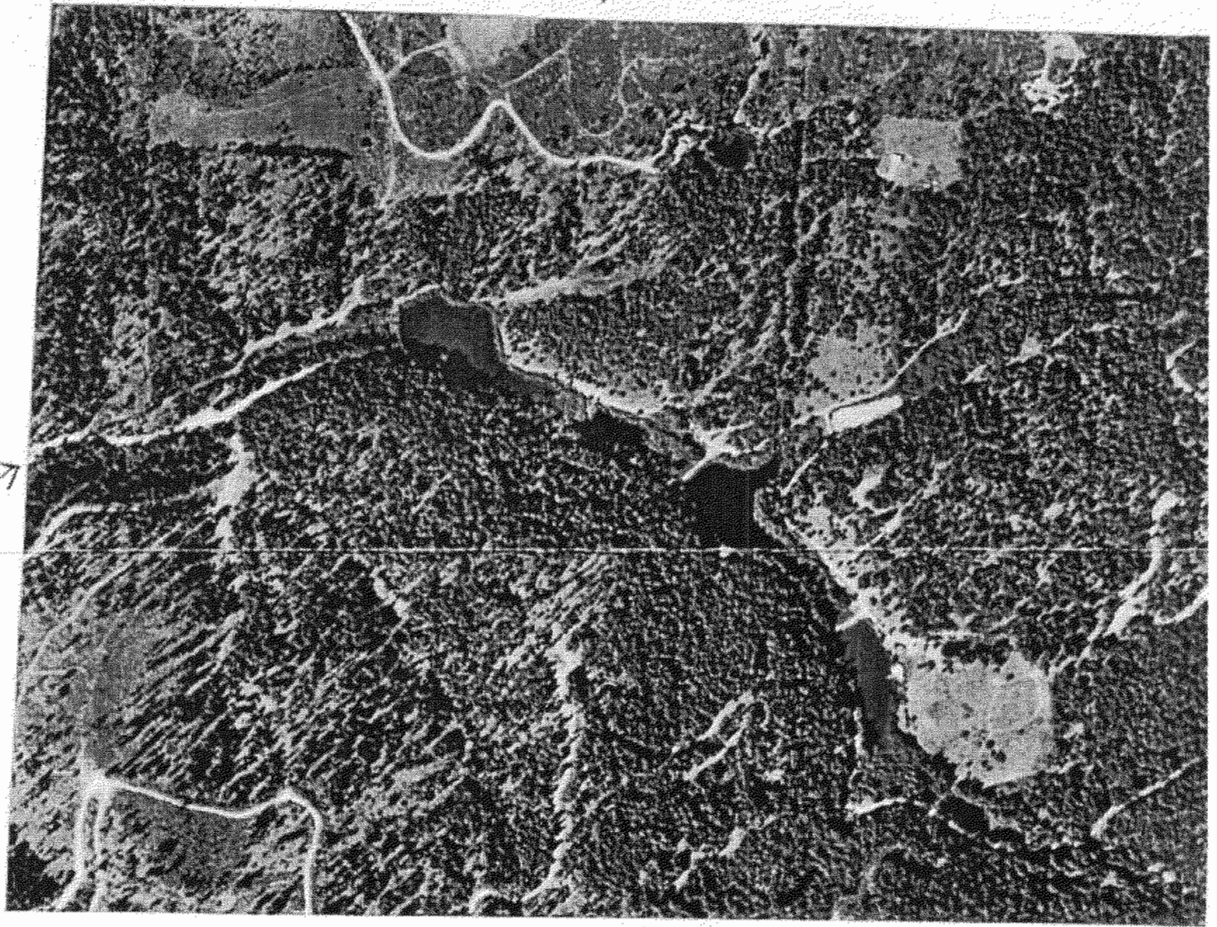
Aug / 2000

East

N



Jefferson Rd



West

Sheldon Magnuson
2220 Jefferson Rd.
c/o 40811 N. Lakeshore Rd
Elk, Wa. 99009

David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Sir,

This letter and fax is in response to the proposed new fee structure for dam safety inspections by Washington State Dept. Of Ecology.

As a pond owner and also as a resource professional, (professional forester since 1986), I am very much opposed to the proposed changes to the dam safety rule, for the following reasons:

1. The costs of inspections should come out of the general fund that all the public pays into. As pond owners we are providing the public with increased wildlife habitat, flood control and fire protection. We shall be forced into either eliminating such services or charging for them.
2. **The proposed fees are extremely high for most pond owners.** It will prove self defeating to charge for the inspections. Many folks will opt out and lower, (make smaller), or abandon their ponds.
3. Is it in the public interest to bring to light a 1917 law that has been basically "sunsetting" through the passage of time? This is a dangerous precedent. Are there not fairer and more equitable ways of raising revenue?
4. The state is penalizing a group that is adding positively to the riparian environment in a creative and useful way.
5. **Dam safety has been achieved** with out a new onerous fee structure.
6. Public input has not been solicited adequately. Of the 20 + pond owners I contacted, only one knew about this proposal. The notices in the paper were not enough to get the word out in our area.
7. It is still very unclear as to which ponds will be required to pay fees. We need clarification on this issue.

Thank you for listening to the public on this issue. **I do think you need to contact more of those directly affected by the proposal.** Please call (509) 292-2100, if you have questions.

sincerely,


Sheldon Magnuson

COPIES TO SENATOR BOB MORTON
Rep. CARLY Mc MORRIS
Rep. Bob Sump

May 31, 2004

David Cummings
Water Resources Program
P.O. Box 47600
Olympia WA 98504-7600

Mr. Cummings,

I oppose the \$800.00 annual tax (fee) about to be placed on Water Reservoirs owners.

Reservoir owners in the State of Washington provide many services to the public and Washington State free of charge.

Here is a brief list of the services provided by reservoir owners. Please call or write if more detail is needed to understand the benefits provided to Washington State and the Public.

1. Flood control.
2. Fire protection.
3. Aquifer recharging.
4. Control silting.
5. Improve irrigation opportunities.
6. Control stream erosion.
7. Stabilize and improve down stream flows.
8. Delay spring run off to a more usable and desirable time.
9. Create and maintain wet land ecosystems.
10. Wild Life habitat enhancement.
11. Recharging atmospheric moisture content.
12. Improving and maintaining recreational opportunities.

If these taxes (fees) are imposed on reservoirs owners many reservoirs will be drained and new construction will be reduced if not stopped entirely.

County levels of Government support and encourage the Water Reservoirs for the above mentioned many reasons. Watershed planning projects (WIRA's) Public Utility districts, Public water supply systems (municipalities), County Commissioners and Council, and numerous state organizations (Grange, Farm Bureau etc) all support Water Reservoirs.

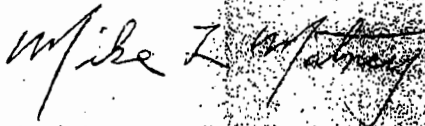
The Department of Ecology is discouraging water conservation through taxes and nearly impossible permit and inspection process.

State legislators should look at why the State Government is discouraging and eliminating private reservoirs.

To discourage conservation of our precious fresh water is an injustice to the future generations.

The taxes placed in the general fund as a result of this tax is very minuscule to the services and benefits provided by the private reservoir owners

Sincerely,



Mike L Matney
Owner of Horse Shoe Lake
And Dad's Lake (Northern Shoshone County)
P.O. Box 462
Kettle Falls WA 99141
Cell# 509-675-4200
Bus# 509-738-4200

WASHINGTON GROWERS CLEARING HOUSE ASSOCIATION

1505 N MILLER STREET, SUITE #260 PO BOX 2207

WENATCHEE WA 98807-2207

PHONE (509) 662-6181 FAX (509) 664-6670

E-MAIL: kmayer@waclearinghouse.org HOME PAGE: www.waclearinghouse.org

Grower Board

Tom Batch
Manson District
Dave Bitterman
East Wenatchee
Mark Clayton
Orondo
Robert Cowan
Peshastin
Scott Dorsing
S Columbia Basin
Sam Godwin
Tonasket
Kurt Guellich
**Ormak/Okanogan
Jerry Gutzwiller
Squilchuck
Tom Hattrup
Upper Yakima
Valley
Ed Kane
Malaga
Kent Karstetter
N Columbia Basin
Kim Kennedy
Cashmere
James Koempel
Dryden
Mark Lapierre
Mid Yakima Valley
Frank Lyall
Lower Yakima
Valley
Barry Maitland
Methow/Pateros
Allen Robison
Chelan
Jim Small
Entiat
Lynn Smith
Wen/Sunnyslope
Richard
Thomason
Brewster
Kent Waliser
Tri-Cities Area
Larry Ward
Monitor
Richard Werner
Oroville
Brian Westerdahl
*Bridgeport

Manager
Kirk B. Mayer

*Board President
**Vice President

June 11, 2004

David Cummings,
Water Resources Program
P.O. Box 47600
Olympia, Washington 98504-7600

Subject: Dam Safety Rule, Chapter 173-175 WAC

Dear Mr. Cummings,

The Washington Growers Clearing House Assn. is a non-profit grass roots tree fruit grower association with approximately 2,170 tree fruit grower members.

The Washington Growers Clearing House Association is opposed to the proposed levels of inspection fee and Permit fee increases.

At the Wenatchee hearing the proposed increases were characterized as reasonable fee increases, which could be passed onto the water users. Such comments are very naïve, in that they do not recognize that the intended water users are family farmers, who cannot pass on the increased costs.

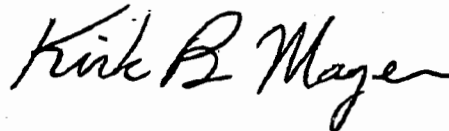
The family farmer is competing in a world market place with "no" ability to pass increased costs to the consumer. Washington State farmers are subject to high local Washington State production/regulatory costs while selling into a domestic and world market dominated by producers with lower taxes and lower user fees.

Page 6 of the 2002 USDA Agricultural Census shows the number of Washington farmers has decreased by 10.4% since 1997. The tree fruit industry decline during the past four years has resulted in approximately 17% orchard removal. Such orchard removal has a devastating impact on the economies of rural communities.

The 2002 Census of Agriculture also shows that 59.4% of the WA. farmers have gross sales totaling less than \$9,999. (Page 3). The proposed permit fee and inspection fee increases will have a significant negative impact on Washington's family farmers.

Fee increases should be more gradual and more closely reflect applying the current fiscal growth factor to the existing fee structure. (Not by increasing the fees by 60+%, then applying the growth factor in each coming year.)

Thank you.
Kirk B. Mayer, Manager



C. Governor Gary Locke
Senator Linda Evans Parlette
Representatives Mike Armstrong
Representative Cary Condotta
Representative Bruce Chandler
Representative Jim Clements

Gilbert McGee
Box 2000
Newport, WA. 99156-2000

June 10, 2004

Mr. David Cummings
Water Resources Program
Dept. of Ecology
P.O. Box 47600
Olympia, WA. 98504-7600

Dear Mr. Cummings:

I am profoundly disturbed about the proposed Tax (in the guise of "inspection fees") to be levied on dam owners in this state by the Washington Dept of Ecology.

I am disgusted that the D.O.E., likely taking a cue from the D.N.R. which makes no attempt to notify adjacent landowners when a major logging operation is proposed, apparently make no attempt to notify dam owners about the proposed fees or the four hearings in late May/Early June.

Only in the past few days have I been able to find out some details of what is proposed after I was tipped-off by another pond owner. This other person said he had called a number of dam owners and not one had heard a thing about the proposal or the hearings.

There are dams that serve industrial/commercial sites, such as mine-tailings ponds, sewage lagoons, irrigation districts, small-scale hydropower, etc, but I would venture to say the vast majority of small dams are for farm/ranch ponds, many built with the assistance of the Soil Conservation Service (now

N.R.C.S.) These dams and resultant reservoirs
Conserve water, provide wildlife habitat and preservation,
provide recreation and are aesthetically pleasing.

The proposed "inspection fees" and the even more onerous
"permit fees" for new construction or modification will
serve to greatly diminish the creation of new ponds/lakes;
Thus, they are very much "anti-environmental". They
will also work a real financial hardship on many dam
owners. In my own case, living on a Social Security
stipend of less than \$650 per month, instead of plans
to preserve my seven-acre lake in a wild and beautiful
state, a heritage for my off-spring or even perhaps with
the public, I will be forced to consider selling to a
developer for tiny lakeside lots.

A great deal of fault for this anti-environmental
move can be blamed on the Wash. St. legislature which,
in a desperate search for more revenue, has given the green light
to the DOE. There isn't a shadow of a doubt that even
if a dam may be temporarily exempt from these fees,
very soon all will be included.

Sincerely,
Gilbert M. Gu

cc: Mrs. Linda Hoffman, Director, DOE

cc: Sen. Bob Martin

cc: Rep. Cathy McMorris

cc: Rep. Bob Sump

McMillan Properties / Briscot Limited Partnership

1818 E. Fairway Loop Rd. • Colville, Washington 99114 • Home (509) 684-2620 / Office (509) 684-4505

Douglas L. Johnson, P.E.
Dam Safety Supervisor, Water Resources Program
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

March 10, 2004

Subject: Fee increase for dam inspections

Dear Doug:

I was very dismayed to receive your letter proposing increased dam inspection fees. These proposals mean that our family partnership, Briscot Limited, would be paying \$4,000.00 for an inspection of the May Lake Dam north of Colville once every 5 years.

Perhaps, another State agency could make a simple inspection every year. Our local phone book is filled with phone numbers of other State agencies.

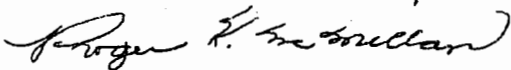
If there are only 14 small private dams in all of Washington under this program and half of them are in the high hazard category, my calculations indicate that DOE would collect \$45,500 every five years just for these private dams. This would be a nice contract for a private engineering firm.

If you include all 936 dams and one-third (312) are high hazard, this means DOE will be collecting \$561,000 per year. It would seem that two competent engineers, two "helping hands in the field", and two secretaries could do this job. A private engineering firm would like to have this contract. But, how many of these dams are State, County, and City dams? Are these governments also paying their fair share? The "Frequently Asked Questions" sheet does not really show the expected fees to be collected. It is miss-leading.

The fee proposal should have smaller fees for smaller dams. A six-acre lake with 10 feet of water should not have to pay the same fee as a 300-acre lake.

Why does it take three engineers for May Lake? Why can't one good engineer and one flunky with a scratchpad and a ruler do the job? How can I make this a "significant hazard dam"?

Sincerely,



Roger K. McMillan, P.E.

CC: Cathy McMorris, State Representative
Bob Morton, State Senator and Chairman of the Senate Natural Resources, Energy and Water Committee.

-----Original Message-----

From: JOleary@ci.bellevue.wa.us [mailto:JOleary@ci.bellevue.wa.us]

Sent: Friday, June 04, 2004 11:19 AM

To: Johnson, Doug

Cc: DOL INT Engineers

Subject: Rule Making Chapter 173-175

Dear Doug,

Thank you for the opportunity in presenting my comments at the Mount Vernon Public Hearing on June 3rd in regard to the amendatory sections for WAC 173-175.

After leaving the hearing, something else came to light that I would also like to add to hearing comments.

Owner oversight of the operations and maintenance checklist of existing low hazard dams should be strengthened. Not only from the standpoint of protecting the Department through documentation, but also to assure that Owners are fully responsible in properly maintaining and operating dams under standard operationg conditions as well as under the emergency action plans.

In order to help assure this, I am recommending that the following be included as either part of the WAC or the DOE Owner Inspection Checklist:

- 1) A written statement that the Owner's engineer signs and certifies that the Owner is maintaining and operating the facility in accordance with the approved O&M manual by the dam project engineer or, in updating, the O&M reviewing engineer.
- 2) Low hazard dams are operated under emergency action plans, in many cases it will require the modification of flows by gate operation.

Again, an EAP, should be reviewed and approved by a Professional Engineer since the operation of dam gates from their standard operation position could have impact on upstream and downstream flows that need to be fully understood. The checklist should include the name of the Owner's engineer responsible for the EAP.

- 3) Provide to the dam owner, the criteria that the department uses in assessing the hazard classification, in some form, that the owner will fill out, that certifies that no changes in downstream hazard conditions have occurred since the last annual report (checklist). This will assist the department in determining if a site inspection is necessary to re-evaluate the hazard classification for a particular dam.

In the low hazard dam situation, the carrying out of operation and maintenance becomes that much more critical. The real concern here is that the department is using its authority to shift the responsibility of inspection to the low hazard dam owner. The way the amended WAC changes read now leaves the department vulnerable to potential legal issues. The department is better off to just simply raising its jurisdiction above the low hazard dam classification.

But, that is highly unlikely, so the only proper recourse is to shift legal responsibility away from the department to the dam owner. By doing this will protects the deparment, but also will place pressure on dam owners to properly

6/10/2004

maintain and operate dams which is in the best public interests to all of us. What is only needed is the documentation from the dam owners that it is being done. By requiring dam owners to have a professional engineer in accordance with RCW 18.43 to certify that the dam is being operated, maintained and inspected in accordance to state dam safety rules can only benefit the public and protect the department from potential lawsuits.

Hope you find these comments helpful.

Joseph P. O'Leary, P.E.
Water Resource Engineer
City of Bellevue

6/10/2004

2262 SR 211
Newport, WA 99156
June 10, 2004

David Cummings, Water Resourced Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Cummings:

Just this last week I have become aware that amendments are being proposed to include fees for reviewing existing dam constructions periodically. Whether or not it was a published notice in our newspaper, The Newport Miner, I do not know, but do know that I was completely unaware that such high fees are being proposed for having something that is so beneficial to our environment.

Ponds create a place for wildlife, including migratory birds. Landowners who are willing to enhance their land for wildlife should not be additionally penalized with unaffordable fees.

With so much land being divided and used to provide housing for our great population increase, the ponds are especially beneficial to provide areas for wildlife, to improve our air quality, and even some can be used for fire protection. I requested our fire department to inspect my place to point out deficiencies. During the inspection, we determined that if the need arose, they could count on coming to my place to fill their water tanks from my pond.

When one considers the value of ponds, it seems very unreasonable to place an undue burden on citizens by charging them unaffordable rates for doing some beneficial to all of us.

As for inspecting dams, if it were determined that my dam truly posed a risk, I would have no objections to do what is necessary to eliminate that risk. But as for paying \$2500.00 or \$4000.00 to inspect the dam is far too much.

Sincerely,



copy: Senator Bob Morton
Representative Cathy McMorris
Representative Bob Sump

**Reflection Lake
Community Association
P.O. Box 73,
Elk, Washington 99009**

June 4, 2004

David Cummings
Water Resources Program
P.O. Box 47600,
Olympia, WA. 98504-7600

Dear Mr. Cummings,

Our apologies for not attending the hearings held in Spokane on May the 26th. We missed the Announcement and article printed in the Spokesman-Review.

Working with the local regional office of the DOE, we were aware of the proposed fees and Inspection program. As a wise man said "the devil is in the details". Having read two fact sheets Printed by the DOE, we are now very concerned and upset by what appears to be a grab for General Fund revenue and not a genuine attempt to insure safety for ecological protected areas.

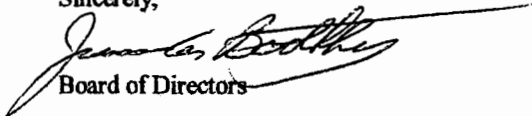
Reflection Lake qualifies as a "significant-hazard dam", has a new 125K /100 year flood prevention Designed dam, 55 acres in size of which 35 acres are shallow, large wetlands on both the north and South end, and lies in a natural valley. We have 130 residence, half are retired and on a fixed income.

We appose the amendments to the Dam Safety Rule, Chapter 173-175 WAC.

Our reasons are simple: (1) One inspection (about 3 hours), every 5 years would cost \$4000; One Inspection every 10 years would cost \$5000; this is ridiculous!
(2) We already pay the highest property tax rates for choosing to live in Proximity to a lake.
(3) Should the revenue be kept by the Department of Ecology it would Provide another host of employees and regulations for a swollen Washington beauocracy!
(4) Should the revenue be put in the general fund, then it is clearly a way For current political leadership to pay for failed leadership!
(5) Arbitrary implementation of a 1917 levy fails to recognize modern Technological improvements in Dam construction.
(6) Taxing rural state resident's heavily only causes good families to move Away, and more property added to the county tax burden.

Many association members have time to involve themselves in politics and would like to know, Who is responsible for reviving the proposed inspection fees?

Sincerely,


Board of Directors

Copy To: Doug Sutherland
Senator Bob McCaslin

Blanche Roening
P.O.Box 98
Valley, Wa. 99181
June 7 2004

David Cummings
Dept. of Ecology, Water Resources
P.O.Box 47600
Olympia, Wa 98504-7600

Dear Mr. Cummings:

In response to your Dam Safety Rule Public Hearing of May 26-04. I have a few comments. I feel as though Dam Safety is singeling out a few citizens to impose an unfair taxon, what you choose to call a fee. Have never heard of building an automatic increase, your 3% a year into a fee to be added every year and compounded. Over a period of not too many years this would add up to quite an increase. It looks to me like you are encouraging people to do away with their ponds unless they are essential for stock etc. In that case they could claim your Fee as a tax deduction.

In the past the Government was encouraging people to put in Wild Life Ponds, even cost sharing some projects for the betterment of Birds and Animals and also said they were enviromentally benifishal. Guess those are things that are no longer considered worth while.

With your absurd Fees for Pond building permits, improvments, repairs, inspections etc. plus the anual charges which are akin to extortion, not very many people are going to be interested in a project that is going to continue to be a financial liability that keeps growing every year for the rest of their lives and of their predecessors.

We went to a lot of work and expence, hired an Engeneer, had plans drawn up in detail and hired a person with dam experiance. He had worked on the earthen part of the Noxan Dam in Montana. We did all of this so we could build a dam that would be as good and safe as is possible for an earthen dam to be constructed. I guess good is just never good enough.

At the D.S. Hearing you made quite an issue of the dams that breached killing 8 people. You presented this in a little bit of a misleading way giving the impression it had happened recently and to several differant dams. Mr. Long brought to everyones att- it was only 1 dam in which 7 of the 8 died in 1932. I would be very interested to know when the other accident occured resulting in the other death. Appearantly D.S. was not doing any inspection at that time.

I would appreciate you supplying me the information as to how many acre feet each of these dams held.

Thank you,

Blanche Roening

Jack Roening
P.O. Box 98
Valley, WA 99181

June 8, 2004

David Cummings
Dept. of Ecology, Water Resources
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Cummings:

Please accept this letter of comments about and an appeal against the proposed changes in regulations and money charged for dam inspections improvement, modification and building a new dam. I have noticed articles in the papers encouraging people to build dams for wildlife benefit, including expedited handling of permits and cost sharing. If Dam Safety wants to put a stop to building future dams that are a benefit to wild life and people, they only need to continue pushing these new regulations.

I am asking that my dam be reclassified back to having a Low Downstream Hazard rating, or be given a waiver allowing my dam a non revocable exempt status.

1. Why is my Dam a Significant Hazard?

According to D.S. my dam is a Significant Hazard because one or more people live downstream of my dam. I don't believe using this criteria has any merit by it's self. Other factors are much more important, such as if a dam were to go out; would it go out slow or fast? I have a letter from a D. S. inspector addressed to D.S. advising them that if my dam developed a problem it would go out slow.

2. Was my dam properly constructed?

My dam meets or exceeds the criteria for a dam under 15 ft. high that can impound 10 ac. ft. or more. The dam was designed to be exempt from D.S. regulations. I was not aware that if the dam had any freeboard it was a D.S. violation. You can impound 9.9 ac.ft. but the dam can't be any higher than the water level. I guess freeboard on a dam makes it unsafe according to D.S. regulations.

3. Was my dam designed by a Hydrolic Engineer?

Yes and periodically was visited by that engineer during construction. The check list I have says nothing about a D.S.Engineer being required to be present during construction.

4. Were the people that built my dam Qualified?

Yes. The person that supervised and constructed my dam was a foreman on

the earth filled part of the Clark Fork River Hydro-Electric Dam for the Noxon Reservoir, Noxon, Montana.

5. Do I believe my dam is safe?

Yes. It is very safe. This dam has been in place for 10 years and not shown any sign of weakness. My dam is 21 ft. wide across the top, 215 ft. long and the downstream toe is approximately 50 ft. in the form of a vee. It has had loaded cement and logging trucks drive over it. Due to the long toe of the dam there were a few small live springs that were covered. D.S. suggested water is seeping around the north end of the dam. These springs were running before the pond was filled. This dam is constructed of a sand and gravel soil that was borrowed on site. The center of the dam is clay acquired from Lane Mountain Silica plant in Valley, WA. About 2 mi. away. I had the clay analyzed and it is 41% pure clay. The clay center has about 1200 cubic yards in it and the clay was cut into both sides as well as the bottom.

The long toe was necessary to build the 21 ft. wide road across the top of the dam for access to the property from Bulldog Creek Road. When we reached a point 16 in. below the finished grade of the road we laid down a layer of Amaco 2002 construction fabric over the top of the dam. Where the secondary spillway pipe was put; we used 18 in. heavy steel culvert and rested it in the clay. The construction cloth protects the clay center from mixing with the top sand and gravel roadbed. The crest of the dam has 2 ft. of freeboard.

Approximately 400 cubic yd. of muck, wood and vegetation were removed to insure a clean, solid, and stable foundation for the new dam. The old Dam was completely removed.

6. How far is the first home below my dam?

The first house that an instant breach of my dam could reach is 1/2 mi. and the second is 6/10 mi. away. Now consider that the water would have to flow through a wide thickly brushed canyon and pass through a culvert running under Bulldog Creek Road and then an approximately 25 ft. sharp drop before reaching houses. I think even in a worst case scenario there would not be enough energy or water left to do any harm, and remember a D.S. inspector says if my dam had a problem it would go slow.

7. 100 year flood

My dam is located at the headwaters of Bulldog Creek. All of the water in my pond comes from springs on my property. My dam backs water up to within 40 ft. of the upper most spring. There is no stream above the upper most spring at any time of the year. It is a blind canyon wall. After water leaves the primary trickle tube spillway from the pond, it is the beginning of Bulldog Creek.

According to D.S. if the two man made small lake dams several miles southeast of my pond, each containing about 115 ac.ft. of water, went out the 230 ac.ft. of water in them could find it's way down to my pond and wash it out. It is unbelievable that if my dam containing 8 ac.ft. would make an iota of difference if 230 ac.ft. of water found it's way to my pond.

My pond never floods, gets discolored or freezes over completely. In the

10 years we have had the pond no more than 60% of it has ever had surface ice. This is due to a constant flow of between .66 and 2 cfs. of moving water. It is probable when our pond impounds 8 ac.ft. it may freeze over a bit more, but we have kept it at 5 ac.ft. due to not wanting our pond to touch the adjacent property. If an agreement is ever reached with the owner of the adjacent property we will impound the 8 ac.ft. that was intended when the pond was built. The most water my pond will ever impound is 8 ac.ft. controlled by a trickle tube that keeps the pond at a near constant level. The most the level can vary is less than 4 inches.

I have a letter from the U.S.D.A.-S.C.S. stating the primary and secondary spillways meet the criterion for the 25 year flood requirement at the mouth of Bulldog Creek. The letter also points out that only the headwaters are going through my pond. I don't have any data on just the headwaters but believe the flow at the mouth would be 2 to 3 times the flow at the headwaters of Bulldog Creek. It would be unlikely my primary and secondary spillways would not meet the requirements of the 100 year flood.

My pond is less than 1 acre in surface area, contains 5 ac.ft. and is 10 ft. deep now. If and when we raise the trickle tube height 2 ft., the pond will have a surface area of 1.33 ac., contain under 8 ac.ft of water and be 12 ft. deep. The area that is deeper than 10 ft. will be about 50 by 50 ft. or less.

This is where the "GOT-CHA" game starts. The steadfast letter of the law keeps my pond from being exempt. Lowering the height of the dam is not acceptable. My dam would not have adequate freeboard and the access road would be severely damaged.

The law says you can have a pond impounding up to 10 ac.ft. of water but the crest of the dam can not be any higher than the level of the height 9.99 ac.ft. of the water behind the dam. It is apparent if you have 9.99 ac.ft. which the law allows, you are in violation of the law if you have any freeboard on your dam. This is the way it is if you want your pond to be exempt. This law should be repealed and freeboard required.

On the other hand if you have a dam under 15 ft. high and can impound 10 ac.ft. or more, you are in violation if you do not have at least 2 ft. of freeboard on you dam. Common sense tells a prudent person if 2 ft. of freeboard is required on a dam 15 ft. high or less, the reason is to protect the dam from wave action to prevent it from washing out.

It seems if a dam has 10 ac.ft. of water D.S. doesn't want it to wash out, but if it has 9.9 ac.ft. in it and it washes out it's okay, not believable but true.

The other part of the less than 10 ac.ft. exempt law states if the water in your less than 10 ac.ft. pond is more than 10 ft. deep, you are in violation and not exempt. If you are allowed to store 9.9 ac.ft. and be exempt from D.S. regulation, why is the 10 ft. depth a factor? If 9.9 ac.ft. is exempt, what does it matter how deep the 9.9 ac.ft. is? No matter how

deep the 9.9 ac.ft. pond is only 9.9 ac.ft, of water can be released. I believe the 10 ft. depth part should be repealed also.

If D.S. would like more cooperation from the people what are interested the same things they are. They should make themselves more user friendly. Whenever bad rules and regulations are eased, friction will be reduced and D.S. public image will be improved. A letter of the law decision without factoring in unique conditions is very poor policy. Sometimes common sense coupled with discretion must determine what is right and wrong. Riders can

be added to block abuse and dishonesty. One law does not fit all. Each pond should be judged on an individual basis by a competent D.S. Engineer. A person with good judgement should be mandatory, and he/she should be capable of making proper decisions on their own.

8. Trickle Tube Spillway

The primary spillway in my pond is called a trickle tube. The vertical conduit is a 24 in. culvert. The horizontal conduit is 18 in. The vertical conduit is fitted to the horizontal to form a "tee". This tee is encased in a poured cement block that rests on the bottom of the pond. The dimension is about 48" high by 48" wide by 72" long. A 16" slide valve is bolted to the pond end of the cement block so the pond can be drained. The other end of the horizontal conduit protruding from the block connects to the 18" conduit running through the dam to the creek. The vertical 24" conduit is fitted with a 36" aluminum conduit over the outside of the 24" conduit, the same length as the exposed 24" conduit is above the cement block. As you can see the water must flow up from the bottom between the 24" and 36" conduit, then fall into the 24" inner conduit pipe to exit the pond. This controls the level of the pond, takes the water from the bottom so no floating debris can enter the trickle tube spillway, because the 36" conduit is 6" higher than the 24" conduit. The trickle tube spillway will not washout because the exit water never touches the pond banks. The temperature from the bottom is cold, so cold water is put in the creek not the warm surface water.

I have installed galvanized supports, imbedded in the cement block to build a galvanized and stainless steel platform, so the valve control is accessible as well as the 36" over pipe for servicing, if needed. The 18" exit conduit has a rubber gasket where it is connected to the exit conduit at the cement block, also at every joint the entire length through the dam. Bentonite clay was used to assure there would be no leaks around the conduit where it went through the clay dam center.

9. Dam Safety Rule Public Hearing Spokane, WA May 26, 2004

I have as many questions as comments. The issue of lives lost to dam failures was designed to impress those attending the hearing. As I listened to D.S. I thought D.S. was talking about 8 lives being lost recently. Then Stan Long challenged D.S. about when the 8 lives were lost and it came to light that 7 of the lives were lost in 1 dam failure in 1932. That is 72 years ago! When was the other life lost, before or after 1932? How many ac.f.t did these dams impound? Statistics presented like these are misleading and everyone at the hearing felt it was intentional. Full disclosure would have been appropriate. As I see it, loss of life due to small dam failure is insignificant compared to (I can't think of anything to compare it to.) It is that insignificant.

I believe more people have lost their lives from being killed by cougars and bears in the last 72 years than small dam failure. Should we kill all of the cougars and bears? Consider lives lost to pets, should the state charge anyone that owns a small dog \$250 a year and owners of large dogs \$800.

D.S. made it clear that the legislature told D.O.E.- D.S to charge dam owners more money and the money went into the General Fund. D.S. didn't get any of it. Later in the hearing D.S. said they would get enough money to

hire 2 additional Dam Engineer Inspectors so D.S. could have teams of 2 inspectors for small dams and a team of 3 for bigger dams. If the inspectors are competent why isn't one adequate? Perhaps it would be appropriate to hire on building inspector for a small house, 2 for big houses and 1 for each unit of an apartment house.

A short time ago D.S. inspected my dam containing 5 ac.ft. of water. Three inspectors came. I could not leave the house because an inspector sat in my living room asking questions and filling out a form for over an hour. Just as the interrogation ended the two came up from the dam. I felt like I was Public Enemy #1 being attacked by a SWAT team. I could have filled out the form all by myself just fine, there was no need for the inspector in my home. The dam is quite small, what were the two inspectors looking at for an hour?

D.S. was asked if this hearing was about dam safety or money. D.S. admitted it was about money.

Did the legislature contact D.S. or did D.S. persuade a legislator to sponsor a bill to give D.S. authority to charge a small group of dam owners exorbitant amounts. That is really extortion.

Did D.S. attend meetings and testify to influence the legislature to authorize D.S. to rewrite new charges without any limits? Did D.S. testify as to how many lives could be saved by hiring more dam inspectors? Who would vote against a bill that would save lives? If the legislators knew the truth they would not have passed this legislation. In my case if this bill is not repealed D.S. will charge me \$250 a year for owning a one acre Wild Life pond with 5 ac.ft. of water in it for 10 consecutive years and inspect one time, that is \$2500 per inspection. That is blatant extortion. D.S. told us that a 3% charge will be added to the \$250 each year to cover inflation. It is unbelievable any one would stoop that low. D.S. also explained that if we didn't pay when billed they would turn us over to a collection agency.

If this legislation is allowed to stand, think of what could happen. Suppose D.S. wanted more money, all they need to do is send out notices to more dam owners telling them their dam has been reclassified to a significant or high hazard status and start sending a bill every year. It seems the legislators have opened a Pandora's Box. This legislation should be repealed as soon as the legislature convenes. An injunction should be placed against D.O.E.- D.S. to stop implementation of this legislation until the legislature can review the repeal request.

I am 74 and my wife is 73, we don't need this kind of treatment from D.O.E. Dam Safety.

Thank you for your consideration of this matter.

Jack Roening

Jack Roening

C.C. Governor Gary Locke
Linda Hoffman, Director of the Department of Ecology
State Senator Bob Morton
State Senator Bob Sump
State Representative Cathy McMorris
Copies will also be sent to most other State Legislators

STATE REPRESENTATIVE
9th DISTRICT
MARK G. SCHOESLER

State of
Washington
House of
Representatives

AGRICULTURE &
NATURAL RESOURCES
RANKING MINORITY MEMBER
CAPITAL BUDGET
JOINT ADMINISTRATIVE
RULES REVIEW

June 21, 2004



Linda Hoffman, Director
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Proposed Rule Changes to Dam Safety Program

Dear Director Fitzsimmons:

Recently, the Dam Safety Office Program within the Department of Ecology has completed public testimony on its proposed rule changes. Of particular concern to me are the construction and inspection fees being placed upon dams which are conservation structures.

The high fees associated with having the department approve the plans and then inspect these conservation structures will only dissuade landowners from maintaining or building new conservation dams. Conservation dams are relatively inexpensive and many cost less than \$10,000 to design and build. Requiring an annual fee of \$250 for an inspection which occurs once every 10 years is not appropriate for these dams which have a very specific and limited purpose. These types of dams are beneficial for recharging water underground and they also provide safety to the public by preventing uncontrolled flooding. For these conservation structures, I believe it would be in the interest of the department and the general public to use a different tiered approach than the one proposed.

On a final note, the proposed rule also allows the department to determine an emergency condition based upon the threat to "public safety" rather than the current language of "life." As there is no definition for "public safety" in the proposed rules which would limit potential abuses of what this term means, I believe it best to leave "life" as the measure for making this determination.

Sincerely,

Representative Mark Schoesler
9th Legislative District

cc: Doug Johnson, Dam Safety Office

3963 LeClerc Road
Newport, Washington 99156
June 10, 2004

Department of Ecology
Mr. David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Cummings:

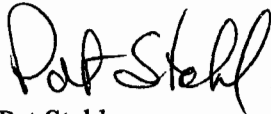
I am writing in regards to a PROPOSED AMENDMENT TO THE DAM SAFETY
RULE CHAPTER 173-175 WAC.

My interest in the proposed rule change stems from the fact that my wife and I are the owners of a small fish farm that services Northeastern Washington. We have three ponds and have a water right to a fourth pond. If the rule changes were to affect our ponds, we would immediately be put out of business. We do not produce enough fish to pay for the proposed fees.

It seems that regulations and their associated expenses proliferate and gradually strangle efforts to sustain small businesses in Washington. They not only make it more difficult to continue the business, they also discourage individual initiative to start something new. The information I have received on the proposed changes indicate that inspections will probably be done only once every five years, even though the fees will be annual. The inability to inspect every pond is understandable when I consider the number of ponds in our small area that I serve. Effectively, the assessments will be a tax much more than a fee for given services.

Obviously, owners of small ponds are a distinct minority in the state and do not carry much political clout. In spite of that, it is my hope that you will work to make certain that these amendments will not be put into effect, and that you will work to allow people like me to continue to contribute to the economy and ecology of our state.

Sincerely,

A handwritten signature in black ink that reads "Pat Stahl". The signature is written in a cursive, slightly slanted style.

Pat Stahl

**Wenatchee Heights
Reclamation District**

330 Bohart Road
Wenatchee WA 98801
(509) 663-5488
whrd@nwi.net

June 1, 2004

David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Re: Proposed Dam Safety Inspection Fees:

Mr. Cummings,

The Wenatchee Heights Reclamation District and all of the Landowners it represents do hereby object to the proposed increase and annual assessment of Dam-Safety inspection fees.

The agricultural industry in our area is still struggling with a depressed economy and over regulation.

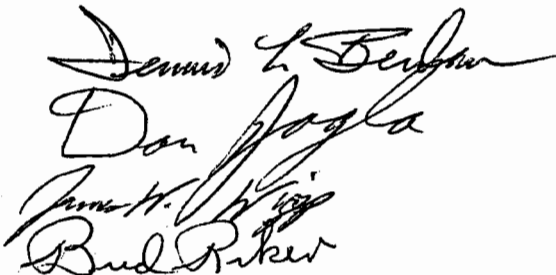
Our budgets and associated assessments have been hard hit with prior costly regulatory requirements and mandated improvements to our reservoirs; this will cause a significant hardship to the Landowners we represent.

That is all this whole proposed increase of Dam-safety inspection fees are is another hidden Tax, the true benefit goes to the States coffers not to public safety.

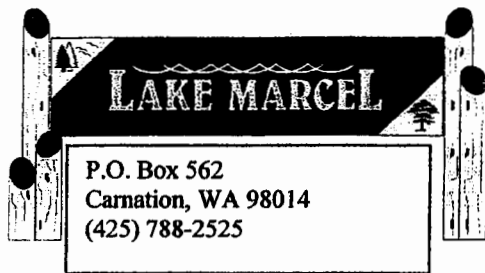
If these proposed inspection fees are allowed to be levied it will increase our annual budget by \$2,100.00 and require the Board of Directors to raise our annual assessments well over the current \$240.00 an acre.

Some form of cost adjustment or percentage deduction should be factored in to the proposed fee schedule for entities, like ourselves, that have multiple dam ownership.

Sincerely,
Wenatchee Heights Reclamation District Board of Directors



C.c. Armstrong
Condotta
Parlette



June 1, 2004

David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Cummings:

This letter constitutes the comments of the Lake Marcel Community Club (LMCC) regarding the Washington State Department of Ecology (Ecology) Proposed Amendments to the Dam Safety Rule (Chapter 173-175 WAC). LMCC has several concerns and suggestions regarding the proposed fee structure for inspections, construction, and modifications of existing dams.

- LMCC feels the proposed fees for periodic dam safety inspections are innately unfair to small businesses and non-profit corporations (such as ourselves) and have disproportionate negative impacts on small businesses. The Regulatory Fairness Act Compliance Document prepared by Ecology for the proposed amendments acknowledges this disproportionate impact and states that mitigation is provided by prorating the inspections fees over the inspection cycle (either 5 or 10 years). This mitigation measure does nothing to address the innate unfair impacts to small businesses or non-profits with existing dams. For LMCC, the proposed \$800 per year fee is 6.3% of our operating budget, higher than any of the sample affects to business listed in Appendix 3.

Proposed Additional Mitigation: According the to The Regulatory Fairness Act Compliance Document, fees for construction of new dams will be staggered based on size rather than being a flat fee. We suggest a similar staggered fee structure for inspection fees based on the total revenue or operating budget of a business. This would be a fairer, proportionate fee system across all business sizes and would not unfairly penalize small business or non-profit groups.

Alternatively, the inspection fees should reflect the actual time needed to inspect a dam and write the report. This fee could then be billed to the dam owner. This is the most fair way to impose the inspection fees and would stagger the fees across dam size and complexity similar to the staggered fees for construction of a new dam. Certainly a small dam with little control equipment would not entail as lengthy inspection time as a larger, more complicated dam. The inspection fee should reflect the time needed to do the inspection and write the report. The last two inspections on the dam at Lake Marcel took less than two hours each of field work; the report probably took another 8 eight hours to produce. Two engineers working 10 hours and charging out at \$100/hour (a very generous rate) would cost \$2000 to

inspect the Lake Marcel dam and produce a report, half of what LMCC be charged under the proposed fee structure. Two-thousand dollars savings is significant to an organization such as LMCC with a small operating budget.

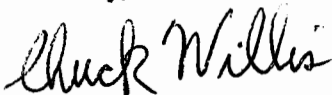
- LMCC's dam was last inspected in October 2002 and we still have not received the report from Ecology. We are in the process of updating our long-term maintenance plan for the dam and find it necessary to hire a private engineering firm to assist us partly due to the fact that we have not received our report yet from Ecology. I am sure you can understand that we are reluctant to contribute to a fee system that has not provided us with timely information in the past. We understand that the new fees for periodic dam inspections will fund two new FTEs to handle inspections for high and significant risk dams. According to our calculations, the proposed fees for inspections would result in revenue for Ecology of over \$422,000 per year in 2004, only to increase thereafter with the fiscal growth factor (342 high risk dams x \$800/year + 594 significant risk dams x \$250/year). This revenue is much more than the costs of supporting two FTEs.

Proposed Additional Mitigation:

- 1) Allow dam owners to hire private firms to complete the periodic dam inspections and reports based on guidelines from Ecology. This would undoubtedly keep the costs lower and provide dam owners with information they need to maintain their dams in a timely manner. We have consulted several private firms that are experienced in dam inspections and they have all given us quotes of \$2000-\$3000 to prepare a report for our dam to meet Ecology guidelines. This savings is significant to an organization such as LMCC with a small operating budget.
- 2) Lower the dam inspection fees to reflect the actual cost of supporting 2 FTEs.

Thank you for consideration of our comments.

Sincerely,



Chuck Willis
Lake Marcel Community Club

Department of Ecology
Mr. David Cummings
Water Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

June 10, 2004
John S. Wilson
1382 Rocky Gorge Road
Newport, WA 99156

Dear Mr. Cummings:

I recently received information concerning proposed amendments to the Dam Safety Rule from a person who attended a Public Hearing in Spokane, WA. on May 26, 2004. He said that he had learned about the hearing from a relative, that they went to the hearing together, and that apparently hardly anyone else knew about it because there were only 4 or 5 other pond owners present at the hearing.

I have since located and contacted 9 other pond owners and am trying to contact two others but may be unable to do so before the June 11, 2004 deadline. Not one person I've talked to, had any knowledge of the State's proposal to charge an annual fee of \$800.00 to owner's of ponds of 10 acre-feet and above, and to charge from \$1,400.00 to \$56,000.00 in fees for new dam construction or modifying existing dams. Some folks I talked to didn't realize that acre-feet are not just a measurement of surface area but of the total depth as well. So for example: A one acre pond with an average depth of 10 feet, would equal 10 acre-feet. Everyone I talked to agreed that the proposed fees are outrageous. At one inspection every 5 years the annual \$800.00 fee would amount to \$4,000.00 per inspection.

Ponds, especially the larger ones, have public values such as providing water for fire protection in rural areas and providing valuable habitat for many kinds of wildlife. Since most pond owners are not wealthy, but just ordinary people, the proposed fees will not only place a financial hardship on present pond owners, but will also discourage the construction of new ponds and the creation of more valuable wildlife habitat and fire protection. These proposals are not only unfair; they are also not in the best interest of the public. This is the wrong way for the State to raise revenue.

I don't know what the law requires of the State for public disclosure, but it seems obvious that the public was not adequately informed of the 4 hearings, which were held in the State between May 26 and June 3, 2004. That along with the very short public comment period means that most people who will be negatively impacted by these proposals will never know about them or have an opportunity to comment about them before the June 11, 2004 deadline. For these reasons, if the State railroads these proposals through, some pond owner's have discussed forming a "Pond Owner's Association" and hiring attorneys to investigate the legal basis for a "Class Action Lawsuit" against the state. I hope the State will reconsider and withdraw these proposals. Otherwise I will join the "Pond Owner's Association".

cc. Sen. Bob Morton cc. Rep. Cathy McMorris cc. Rep. Bob Sump

Sincerely,
John Stephen Wilson

VI. Copies of Public Notices

The Hearing Notice on the right-hand side of this page was published in the following newspapers on May 12, 2004:

- ☐ Bremerton Sun
- ☐ Colville Statesman-Examiner
- ☐ Everett Herald
- ☐ Kennewick Tri-City Herald
- ☐ Longview Daily News
- ☐ Olympian
- ☐ Omak-Okanagon Chronicle
- ☐ Seattle Daily Journal of Commerce
- ☐ Skagit Valley Herald
- ☐ Spokane Spokesman Review
- ☐ Tacoma News Tribune
- ☐ Vancouver Columbian
- ☐ Walla Walla Union Bulletin
- ☐ Yakima Herald Republic

Following this page are three additional public notices:

1. Frequently Asked Questions about Proposed Fees for Dam Safety Inspections, published and distributed in February 2004;
2. Hearing Notice: Proposed Amendments to the Dam Safety Rule, Chapter 173-175 WAC, published and distributed in April 2004.
3. The notice of Proposed Rule Making (CR-102), filed with the Code Reviser on April 21, 2004, and published in the Washington State Register on May 5, 2004.

HEARINGS NOTICE Proposed Amendments to the Dam Safety Rule, Chapter 173-175 WAC

WHEN:
Spokane, Washington
Wednesday, May 26, 2004,
7:00 pm
Department of Ecology
Eastern Regional Office
1st Floor Large Conference
Room
N. 4601 Monroe

Wenatchee, Washington
Thursday, May 27, 2004,
7:00 pm
Senior Activity Center
Card Room
1312 Maple Street

Olympia, Washington
Tuesday, June 1, 2004,
7:00 pm
Lacey, Department of Ecology
Auditorium
300 Desmond Drive

Mount Vernon, Washington
Thursday, June 3, 2004,
7:00 pm
Police & Court Campus
Multipurpose Room
1805 Continental Place

COMMENT PERIOD: May
5 to June 11, 2004, until
5:00 pm

The Department of Ecology
is holding hearings on pro-
posed rule amendments to
the Dam Safety Rule,
Chapter 173-175 WAC.
The rule amendments will
include fee increases for
plan reviews and
construction inspections,
and resume the collection
of fees for Ecology's peri-
odic inspection of existing
dams. Some updating of
language and minor revi-
sions also will take place.
**Copies of the proposed
rule language and Small
Business Economic Im-
pact Statement is**

available at:
[www.ecy.wa.gov/
programs/wr/dams/
darule.html](http://www.ecy.wa.gov/programs/wr/dams/darule.html)

For more information on
the public hearings contact
Judy Beitel at (360)
407-6878, email --
jbei461@ecy.wa.gov

For more information on
the proposed rule
amendments contact Doug
Johnson at (360) 407-6623,
email --

djsd461@ecy.wa.gov
For special accommodation
needs, please call Judy
Beitel at (360) 407-6878 by
May 19, 2004. For lan-
guage translation call TTY
(for the speech or hearing
impaired) at 800-833-6388.
#1647 5/12



Frequently Asked Questions about Proposed Fees for Dam Safety Inspections

Water Resources Program

Q: *Why is the Department of Ecology proposing to amend the Dam Safety Rule?*

A: Ecology is proposing to amend the state Dam Safety Rule (WAC 173-175) that was adopted in 1992 and amended in 1995. The changes will include fee increases for plan reviews and construction inspections, and resume the collection of fees for Ecology's periodic inspection of existing dams. Some updating of language and minor revisions also will take place.

Q: *Why does the dam safety program exist?*

A: There are currently more than 900 non-federal, non-hydropower dams in Washington that store at least 10 acre-feet of water or watery materials, such as mine tailings, sewage and manure waste. A single acre-foot of water contains 325,851 gallons-enough to cover a square acre of land 12 inches deep.

Of the 900 dams, 320 pose a significant or higher threat to downstream residents if the structures failed because of an earthquake, storm or other catastrophe. The risk is based on the number of people and structures that reside downstream from the dam.

Q: *How are dams kept safe?*

A: Ecology engineers conduct inspections of existing dams to verify dams are properly designed, constructed, operated and maintained. In fact, the department engineers spend the majority of their time inspecting existing dams. Periodic inspections are the primary tool for preventing dam failure.

Q: *What are the proposed fees that apply to my dam?*

A: The proposed yearly inspection fee for the state's 130 high-hazard dams, or those located upstream from three or more residences, will be \$800 a year and guarantee an inspection every five years. The proposed inspection fees for the 190 significant-hazard dams, located upstream from one or two homes, will be \$250 a year and ensure an inspection every 10 years.

Q: *Why is the fee increase different for High and Significant Hazard dams?*

A: High-hazard dams cost more to inspect because there are more lives at risk than with significant-hazard dams, and a higher level of inspection and engineering evaluation is required.

Q: *Why does the department need to resume charging periodic inspection fees?*

A: In 1917, lawmakers levied dam-safety inspection fees. The fees were collected until the 1930s when, for reasons unknown, the assessments stopped. The 2003 legislature directed Ecology to reinstate the periodic inspection fees.



Q: *Will building permit fees increase for new construction or modifications?*

A: Yes. Under the same rule, Ecology is proposing to raise the fees the agency charges dam owners to review construction plans for building new dams or making modifications to existing facilities and inspecting the work. The fees also will pay for technical assistance to help all dam owners comply with state regulations. The proposed increases are designed to recover the actual cost of plan review and conducting inspections. Under the new fee schedule, the current minimum \$500 fee will increase to \$1,400, while the existing maximum fee of \$20,000 will increase to \$56,000.

The fees will not affect existing dams unless the owner decides to make structural modifications. However, if Ecology initiates action to have an existing dam repaired due to safety deficiencies, the department will charge owners a flat \$1,400 fee.

Q: *Are there dams exempt from the state regulation?*

A: Dams that store less than 10 acre-feet of water are exempt from state regulation. An additional 145 dams are large enough to qualify for Ecology oversight, but these facilities are either federally-owned or are hydropower dams regulated by the Federal Energy Regulatory Commission. These dams are also exempt from state regulation.

Q: *Who can I contact if I have questions or need technical assistance?*

A: Technical assistance is provided by Ecology to ensure that dams do not pose a threat to the public. For more information, please contact Doug Johnson at (360) 407-6623 or email: djsd461@ecy.wa.gov.

If you require this document in an alternate format, please call the Water Resources Program at (360) 407-6600 or TTY (for the speech or hearing impaired) at 711 or 1-800-833-6388.



Hearing Notice

Proposed Amendments to the Dam Safety Rule

Chapter 173-175 WAC

from Ecology's Water Resources Program

Dam Safety Rule Public Hearings

All hearings begin at
7:00 p.m.

May 26, 2004

Department of Ecology
Eastern Regional Office
1st Floor Large
Conference Room
N. 4601 Monroe
Spokane, WA 99205

May 27, 2004

Wenatchee Senior
Activity Center
Card Room
1312 Maple Street
Wenatchee, WA 98801

June 1, 2004

Department of Ecology
Auditorium
300 Desmond Drive
Lacey, WA 98504

June 3, 2004

Mt. Vernon Police &
Court Campus
Multipurpose Room
1805 Continental Place
Mt. Vernon, WA 98273

Copies of the proposed
rule language and
SBEIS are available to
download and print at:
[http://www.ecy.wa.gov/
programs/wr/dams/dsrul
e.html](http://www.ecy.wa.gov/programs/wr/dams/dsrule.html)

The Department of Ecology (Ecology) will hold four public hearings to receive comments on the proposed amendments to the Dam Safety Rule, Chapter 173-175 WAC. Written comments may be submitted until 5:00 p.m., June 11, 2004.

Background

There are currently more than 900 non-federal, non-hydropower dams in Washington that store at least 10 acre-feet of water or watery materials, such as mine tailings, sewage and manure waste. A single acre-foot of water contains 325,851 gallons—enough to cover a square acre of land 12 inches deep.

Of the 900 dams, 320 pose a significant or higher threat to downstream residents if the structures failed because of an earthquake, storm or other catastrophe. The risk is based on the number of people and structures that reside downstream from the dam.

Ecology engineers conduct periodic inspections to verify dams are properly designed, constructed, operated and maintained.

Inspection fees

In 1917, lawmakers levied annual dam-safety inspection fees. The fees were collected until the 1930s when, for reasons unknown, the assessments stopped. The 2003 legislature directed Ecology to reinstate the periodic inspection fees.

The proposed yearly inspection fee for the state's 130 high-hazard dams, or those located upstream from three or more residences, will be \$800 a year and guarantee an inspection every five years. The proposed inspection fees for the 190 significant-hazard dams, located upstream from one or two homes, will be \$250 a year and ensure an inspection every 10 years.

Permit fees for new construction or modifications of existing dams

Under the same rule, Ecology is proposing to raise the fees the agency charges dam owners to review construction plans for building new dams or making modifications to existing facilities and inspecting the work. The fees also will pay for technical assistance to help all dam owners comply with state regulations. The proposed increases are designed to recover the actual cost of plan review and conducting inspections. Under the new fee schedule, the current minimum \$500 fee will increase to \$1,400, while the existing maximum fee of \$20,000 will increase to \$56,000.

The fees will not affect existing dams, unless the owner decides to make structural modifications. However, if Ecology initiates action to have an existing dam repaired due to safety deficiencies, the department will charge owners a flat \$1,400 fee.

Hearings information

Ecology will hold public hearings in Lacey, Mount Vernon, Spokane and Wenatchee to receive comments on the proposed amendments to the state dam safety rule. The proposed amendments will include fee increases for plan reviews and construction inspections, and resume the collection of fees for Ecology's periodic inspection of existing dams. Some updating of language and minor revisions also will take place.

Hearings schedule

Written comments may be submitted to David Cummings, Water Resources Program, P.O. Box 47600, Olympia, Washington 98504-7600, or faxed to (360) 407-7162 until 5:00 p.m., June 11, 2004.

Wednesday, May 26, 2004

7:00 p.m.
Department of Ecology
Eastern Regional Office
1st Floor Large Conference Room
N. 4601 Monroe
Spokane, WA 99205

Thursday, May 27, 2004

7:00 p.m.
Wenatchee Senior Activity Center
Card Room
1312 Maple Street
Wenatchee, WA 98801

Tuesday, June 1, 2004

7:00 p.m.
Department of Ecology
Auditorium
300 Desmond Drive
Lacey, WA 98504

Thursday, June 3, 2004

7:00 p.m.
Mt. Vernon Police & Court Campus
Multipurpose Room
1805 Continental Place
Mount Vernon, WA 98273

For more information

Copies of the proposed rule language and Small Business Economic Impact Statement are available to download and print at: <http://www.ecy.wa.gov/programs/wr/dams/dsrule.html>

If you would like additional information on the public hearings, please call Judy Beitel at (360) 407-6878. If you have questions on the proposed rule amendments, please call Doug Johnson at (360) 407-6623.

If you require this publication in an alternate format, please contact Judy Beitel, Water Resources Program, at (360) 407-6878 or TTY (for the speech or hearing impaired) at 711 or 800-833-6388.



**PROPOSED RULE MAKING
(RCW 34.05.320)**

CR-102 (7/22/01)
**Do NOT use for expedited
rule making**

Agency: Department of Ecology		A.O. 03-08	<input checked="" type="checkbox"/> Original Notice
<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 03-22-040 ; or <input type="checkbox"/> Expedited Rule Making -- Proposed notice was filed as WSR _____; or <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4).			<input type="checkbox"/> Supplemental Notice to WSR _____ <input type="checkbox"/> Continuance of WSR _____
(a) Title of rule: (Describe Subject) Dam Safety, Chapter 173-175 WAC Purpose: The purpose of this rule amendment is to modify fees that are collected from owners of existing dams and those proposing to build new dams or modify existing dams. Other identifying information:			
(b) Statutory authority for adoption: RCWs 43.21A.064, 43.21A.080, 86.16.061, and 90.03.350.		Statute being implemented: RCW 90.03.470	
(c) Summary: 1) Increase fees for Plan Review and Construction Inspection, and 2) Apply a new fee (but previously authorized by RCW 90.03.470) for Periodic Inspection of High and Significant hazard dams. Reasons supporting proposal: Legislative action requires increase in revenues to cover new Periodic Inspection staff person.			
(d) Name of Agency Personnel Responsible for:		Office Location	Telephone
1. Drafting.....Doug Johnson		300 Desmond Drive, Lacey, WA	(360)407-6623
2. Implementation.... Doug Johnson		300 Desmond Drive, Lacey, WA	(360)407-6623
3. Enforcement..... Doug Johnson		300 Desmond Drive, Lacey, WA	(360)407-6623
(d) Name of proponent (person or organization): Washington Department of Ecology		<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental	
(f) Agency comments or recommendations, if any, as to statutory language, implementation, enforcement and fiscal matters: N/A			
(g) Is rule necessary because of: Federal Law? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, ATTACH COPY OF TEXT Federal Court Decision? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Citation: State Court Decision? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
(h) HEARING LOCATION: See Attachment Date: _____ Time: _____ Assistance for persons with disabilities: Contact Judy Beitel by May 19, 2004 (360) 407-6878 or 711 (TTY) or 1-800-833-8973 (TTY)		Submit written comments to: David Cummings Department of Ecology PO Box 47600 Olympia, WA 98504-7600 (360) 407-6620 dcum461@ecy.wa.gov FAX (360) 407-7162 By (date) June 11, 2004, 5pm DATE OF INTENDED ADOPTION: August 1, 2004 CODE REVISER USE ONLY CODE REVISER'S OFFICE STATE OF WASHINGTON FILED APR 21 2004 TIME 10:56 AM WSR 04-09-109	
NAME (TYPE OR PRINT) Polly Zehm			
SIGNATURE POLLY ZEHR			
TITLE Deputy Director	DATE 4/20/04		

(COMPLETE REVERSE SIDE)

(j) Short explanation of rule, its purpose, and anticipated effects:

This rule amendment will do two things: 1) Increase fees for Plan Review and Construction Inspection, and 2) Apply a new fee (but previously authorized by RCW 90.03.470) for Periodic Inspection of High and Significant hazard dams.

Does proposal change existing rules? ☒ YES ☐ NO

If yes, describe changes:

1) Increase fees for Plan Review and Construction Inspection, and 2) Apply a new fee (but previously authorized by RCW 90.03.470) for Periodic Inspection of High and Significant hazard dams.

(k) Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by writing to: David Cummings

telephoning: (360) 407-6620

faxing: (360) 407-7162

☐ No. Explain why no statement was prepared

(l) Does RCW 34.05.328 apply to this rule adoption? ☐ Yes ☒ No

RCW 34.05.328(5)(a)(i) mandates that this section applies to any "significant legislative rule" of the department of ecology. RCW 34.05.328(5)(c)(i) defines a "significant legislative rule" as a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program. Since the 34.05.328(5)(c)(i) definitions of "significant legislative rule" do not apply here, RCW 34.05.328 does not apply to this rule adoption.

Attachment, CR-102 – Hearing Locations, Hearing Dates and Times

Spokane - May 26, 2004

Department of Ecology Eastern Regional Office
1st Floor Large Conference Room
N. 4601 Monroe
Spokane, WA 99205

Wenatchee - May 27, 2004

Wenatchee Senior Activity Center
Card Room
1312 Maple Street
Wenatchee, WA 98801

Lacey - June 1, 2004

Department of Ecology Auditorium
300 Desmond Drive
Lacey, WA 98504

Mount Vernon - June 3, 2004

Mount Vernon Police & Court Campus
Multipurpose Room
1805 Continental Place
Mt. Vernon, WA 98273

VII. Attachment -- Implementation Plan

Implementation Plan for Chapter 173 - 175 WAC, Dam Safety

- 1. Please describe how the Agency intends to implement and enforce the rule. Please include a description of the resources the Agency intends to use (RCW 34.05.328(3)(a)).**

The rule amends an existing regulation, increasing fees for plan review and construction inspection by Ecology for those building a dam in this State. The rule resumes fees that have not been collected by Ecology since the 1940's, for periodic safety inspections of existing High and Significant Hazard dams.

Implementation of the section of the rule addressing plan review and construction inspection will merely consist of computing and collecting larger fees listed in WAC 173-175 for the same plan review activity without any change of substance in the permitting process. The only new requirement of significance in the plan submittal process will be the submittal of digital files of the construction plans and specifications in addition to the paper originals. The Table 4 fees in WAC 173-175-370 will be adjusted each year by the Fiscal Growth Factor ("Fiscal growth factor" means the average of the sum of inflation and population change for each of the prior three fiscal years, RCW 43.135). After July 1st of each year, the department shall publish the updated construction fee schedule on the Agency internet site.

Implementation of the section of the rule addressing collection of the periodic inspection fee has required Dam Safety to enter into the Agency's existing Billing and Revenue Tracking System (BARTS). Over the past two months, Dam Safety staff have met with members of a team composed of the Fiscal Office's Cashiering Unit, Information Services Applications & Data Services Unit, and the Water Resources Dam Safety Office. A new application utilizing the Washington Inventory of Dams data was written to facilitate mailing of annual invoices to dam owners, accounting for submitted periodic inspection fees, and tracking compliance with the new fee requirements.

Agency resources committed to the project were all existing staff, but time spent devoted to project was taken away from other duties. Staff utilized from the Cashiering and Applications & Data Services Units became available to Dam Safety via reimbursable contractual agreement.

The Periodic Inspection Fee Collection

The first cycle of periodic inspection fees will consist of \$688 for High Hazard dams, and \$250 for Significant Hazard dams. Annually thereafter, the fees will be adjusted by the fiscal growth factor ("Fiscal growth factor" means the average of the sum of inflation and population change for each of the prior three fiscal years, RCW 43.135). After July 1st of each year, the department shall publish the annual periodic inspection fee on the Agency internet site, and by providing written invoice notification by mail or electronic mail to owners of high and significant hazard dams. The inspection fees must be received by the department within forty-five days after the department mails a billing statement or invoice.

- 2. Please describe how the Agency intends to inform and educate affected persons about the rule (RCW 34.05.328(3)(b)).**

The Agency has sent owners of affected dams a Fact Sheet and a FAQ that explained the fees and their collection. An additional educational document will be sent with the invoice for the first fee. Finally, Parts 1 and 2 of the Dam Safety Guidelines (Ecology Publication Nos. 92-55A and 92-55B) will be updated to reflect the changes in the rules. The Guidelines will be posted on the agency web site, and hard copies will also be available upon request.

3. Please describe how the Agency intends to promote and assist voluntary compliance for this rule (RCW 34.05.328(3)(c)).

A significant grace period will be allowed for non-payment. This will keep non-payment from immediately going to collection. During the grace period, significant interaction with non-paying dam owners will take place. This will result in greater success. It is our intent to make every effort to secure voluntary compliance, and only use the enforcement provisions for Delinquent Accounts (WAC173-175-785 (3)) as a last resort.

4. Please describe how the Agency intends to evaluate whether the rule achieves the purpose for which it was adopted, including to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcome (RCW 34.05.328(3)(d)).

The purpose of the rule was to replace a large portion of general fund-based periodic inspection and plan review FTE support with fee revenues. The WAC revisions will create this amount of revenue. We will review the revenue collected annually and compare it to our workload to ensure that we are achieving the objective of recouping "actual costs".

5. Please describe how the Agency intends to train and inform Ecology staff regarding new rule or rule amendment.

Dam Safety staff were part of the team that developed the BARTS application that collects and tracks fees billed and collected, along with the Fiscal Office's Cashiering Unit, Information Services Applications & Data Services Unit. Dam safety staff were trained in use of the application and see little difficulty other than time commitments for fee invoicing and enforcing collection of the fee.

6. Please identify supporting documents that may need to be revised because of the rule amendment. Or identify new supporting documents that need to be developed because of a new rule.

Dam Safety Guidelines, Parts I and II. Part I, General Information and Owner Responsibilities, contains general information about statutory authority, dam safety activities, and dam owner responsibilities for completed projects. Part II, Project Planning and Approval of Dam Construction or Modification, provides information on the specific activities and actions that are involved in project planning and the plan review and construction permit process. An overview of the planning process is provided along with a list of permits and approvals that are normally involved.